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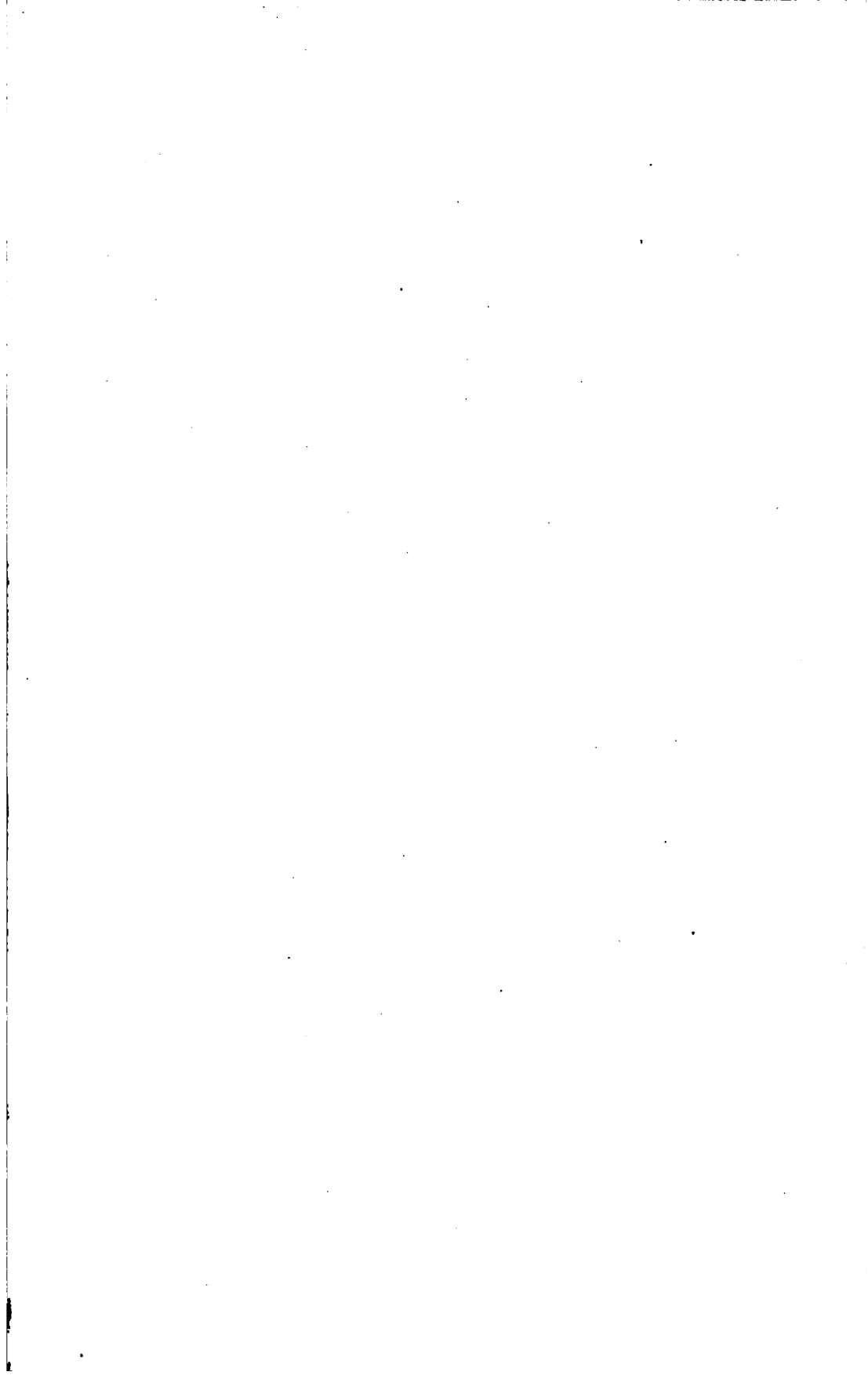


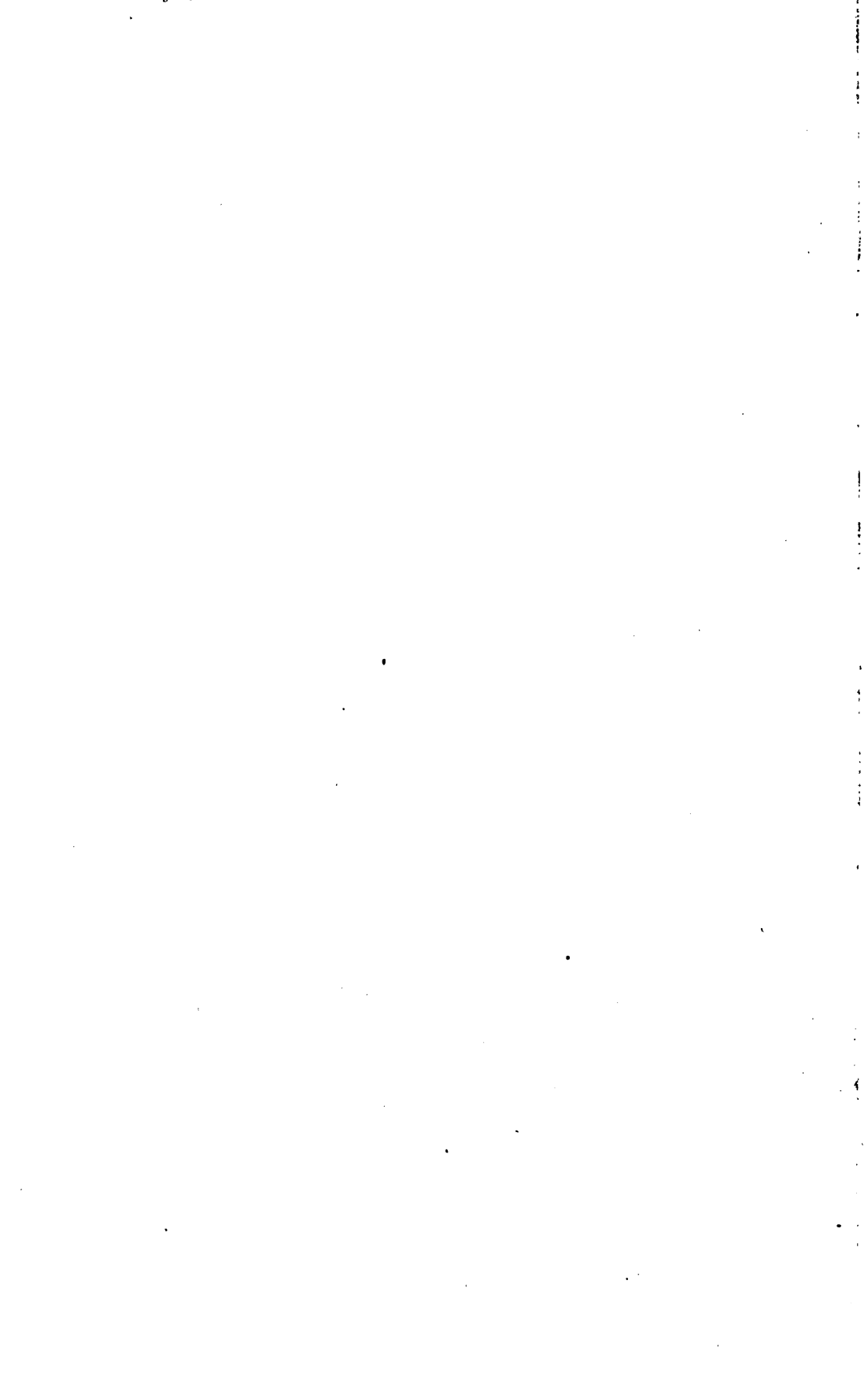
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C

A REPRINT
OF THE
RENT ACT RULINGS
OF THE
JUDICIAL COMMISSIONER OF OUDH
FROM
1871 TO 1895.
(COMPLETE SERIES)

WITH
AN INDEX.

COMPILED BY
R. G. F. JACOB,
Barrister-at-Law.

—
Lucknow:
Printed by MURRAY & Co., Ltd., at the London Printing Press.

1900.

Rec. July 18, 1916

PREFACE.

This is a complete reprint of the "Rent Act Rulings" of the Judicial Commissioner of Oudh, from their commencement (1871) to the end of 1895. In the latter year they were discontinued by order of the (then) Judicial Commissioner : for after the passing of Act XX of 1890, by which the Board of Revenue of the North-Western Provinces was constituted the Chief Court of Revenue for Oudh, instead of the Court of the Judicial Commissioner, it was no longer thought necessary to publish the "Rent Act Rulings" separately from the "Select Cases." But whether the reason for their discontinuance, in their old form, was lost sight of or forgotten, no decisions under the Rent Act were since published as "Select Cases," until these latter were, in their turn, superseded by the "Oudh Cases"—a journal which contains reports of all cases decided by the Judicial Commissioner. The Rent Act Rulings have not before been published in the present form. In some Revenue offices, in fact, the earlier portions are still to be found in manuscript.

I thought it advisable to include in this reprint, partly for purposes of record, cases which have been rendered obsolete by changes in the law or which have been overruled, cancelled, &c. But footnotes have been given showing how such cases have been dealt with by subsequent ones. To facilitate reference, a full index, a table of cases, and a table showing the corresponding sections of Acts XIX of 1868 and XXII of 1886 have also been added.

LUCKNOW:

October 1900.

}

R. J.



Table of Cases.

A.	PAGE.	PAGE.
Abdulla v. Tawakul Husain...	... 126	Musammat Badam Kunwar v. Bhukam Singh ... 68
Ajudhia v. Musammat Alarikhi ...	73	Musammat Bibi Rasul Bakhshi v. Khurshaid Husain ... 25
Amjad Ali Khan v. Abdul Rahman Khan ...	146	Musammat Mahesha v. Kampta Parshad 133
Ashraf Khan v. Amir Khan ...	71	
B.		N.
Babu Sarabjit Singh v. Ganga Din Singh ...	55	Nand Lal v. Nabi Bakhsh Khan ... 15
Babu Udres Singh v. Ram Bharos ...	106	Nanku Singh v. Gholam Husain ... 140
Babu Udresh Singh v. Nidhi Singh ...	21	Nawab Ali Khan v. Subhakaran Singh ... 61
Baiju v. Tribhuan Dat ...	76	Nawab Saadat Husain Khan v. Halbal... 7
Bhaiya Harratan Singh v. Somai ...	52	Niamat Khan v. Mahomed Husain Khan 164
Bhondu Das v. Khanjan Singh ...	67	Niranjana Singh v. Abdul Baqi ... 4
Bodhi Singh v. Gobardhan ...	24	
C.		P.
Chandka Singh v. Lal Chatterpal Singh ...	37	Parshad v. Jeoni ... 49
		Prag v. Mathura ... 117
D.		R.
Debi v. Raghubar ...	82	Raja Amir Hasan Khan, in the matter of the application of ... 77
Dunia Pat Singh v. Umda Khanum ...	44	Raja Madho Singh v. Binda ... 58
E.		Raja Mohamed Ameer Husun Khan v. Esree Singh ... 2
Encumbered Estate of Kaimahra v. Kalka ...	32	Raja Muhammad Mumtaz Ali Khan v. Hubdar Singh ... 100
G.		Raja Rudra Partab Sahai v. Hanoman ... 85
Ganeshi v. Lalu ...	30	Raja Syad Nawab Ali Khan v. Sheo Prasad ... 6
Gaya Misr v. Bhaiya Tribhuan Dat ...	75	Ram Bakhsh v. Chandi Prasad ... 1
Ghulam Raza Khan v. Bansopti ...	132	Ram Lal v. Bhaya Tribhuan Dat Ram ... 84
Ghure v. Mathura Pande ...	78	Ram Sahae v. Lal Sheo Partab Singh ... 95
Gyadin Singh v. Ajudhia Singh ...	14	Ram Sahai v. Chandi ... 161
H.		S.
Har Prasad v. Bisheshur Tiwari ...	18	Sahibdin v. Maqsd Ali ... 42
Hazari Singh v. Meharban Singh ...	8	Sardar Singh, v. Umrao Singh ... 31
Hon'ble Maharaja Partab Narain Singh v. Har Parshad Pande ...	88	Shah Hamid Ahmad v. Baijnath ... 122
I.		Shah Mahomed Gani Ata v. Munawar Khan ... 27
Indarjit v. Dallai ...	33	Sheo Charan v. Sayad Abid Husain ... 3
In the matter of the application of Raja Amir Hasan Khan ...	77	Sheo Dayal v. Mathra Parshad ... 73
J.		Sheopal Singh v. Rani Harbans Kunwar, 48
Jodha v. Sheo Parshad ...	83	Sheru Khan v. Rani Sheoraj Kunwar ... 45
K.		Sirdar Hira Singh v. Sirdar Bhagail Singh 89
Kishan Singh v. Korwar Estate ...	51	Sital Prasad v. Nand Ram ... 10
Kunwar Harnam Singh v. Ram Lal ...	143	Sita Ram v. Ram Autar ... 63
L.		Sukdeo v. Sri Kishen ... 56
Lotai v. Nawab Nisar Ali Khan ...	16	Sukhraj Singh v. Bhaya Tribhuan Dat Ram ... 120
M.		Suraj Bakhsh v. Deputy Commissioner, Sultanpur, in charge of Mahona Estate 66
Maharaja Jagatjit Singh v. Rupan ...	80	
Maheshur v. Bhikh Chand ...	128	T.
Mangal v. Jawahir ...	64	Thakur Araru Singh v. Mahabir Bakhsh 41
Mansa v. Raja Jagpal Singh ...	5	Thakur Fazal Ali Khan v. Umrao ... 52
Matadin v. Ajudhia ...	81	Thakur Jawahir Singh v. Thakur Hardeo Bakhsh ... 22
Mir Abbas Ali v. Amanat Bibi ...	96	Thakur Prasad v. Babu Ajit Singh ... 12
Mobarak Ali v. Raja Amir Hasan Khan ...	31	

INDEX.

ACTS.

Act I of 1868.

See General Clauses Act.

Act XIX of 1868.

See Oudh Rent Act.

Act VII of 1870.

See Court Fees Act.

Act XVII of 1871.

See Oudh Local Rates Act.

Act XVII of 1876.

See Oudh Land Revenue Act.

Act XIV of 1882.

See Code of Civil Procedure.

Act XXII of 1888.

See Oudh Rent Act.

Act IX of 1889.

See Kanungos and Patwaris Act.

Act XX of 1890.

See North-Western Provinces and Oudh Act.

Agent.

A landlord can lawfully authorise his managing—to issue notices of ejectment : **no. 39.**

"Agricultural year."

See no. 70.

Alteration in rent or area.

See Cases under Oudh Rent Act, s. 37.

Appeal.

1. No—lies to the Deputy Commissioner against the order of a Deputy Collector confirming the sale of an under-proprietary tenure in execution of a decree for arrears of rent : **no. 63.**

2. A right of—is created by statute law ; there is no constitutional right of—. It is not the practice of the Court to allow a memorandum of—to be considered as an application for review : **no. 64.**

Arrears of rent.

See cases under Oudh Rent Act, s. 108 (2).

Birtdars.

As to the respective rights and liabilities of—who have been decreed a *birt* of *haqq chaharam* in the *nikasi* of a whole village and their *talukdar*, *see no. 62.*

Cesses.

See Oudh Local Rates Act (XVII of 1871).

Code of Civil Procedure (XIV of 1882).

s. 13.

K., co-sharer and *lambardar* in a certain village, sued M., a co-sharer in the same village, for his share of certain profits of the village for 1295, 1296 and 1297 Fasli. On the 5th September 1890 the Assistant Collector gave K. a decree for a certain sum. M. appealed from the decree. M. then, on the 28th February 1891, sued K. in the Court of the same Assistant Collector for her share of the profits of the *str*-lands for the same years, and up to Aghan 1298 Fasli. On the 29th May 1891 the Assistant Collector gave M. a decree for a certain sum. K. appealed from this decree. The appeals were heard by the District Judge on the 2nd May 1892. He first dismissed M.'s appeal, and then decreed K.'s appeal on the ground that the suit, as regards the claim for the years 1295, 1296 and 1297 Fasli, was barred by Explanation II, s. 13, Code of Civil Procedure. M. appealed to the Court of the Judicial Commissioner from both decrees of the District Judge.

Held, that the claim in the second suit in respect of the years 1295, 1296 and 1297 Fasli might and ought to have been made a ground of defence in the first suit, within the meaning of Explanation II, s. 13, Code of Civil Procedure. *Mahabir Pershad v. Macnaghten* (16 Cal. 682 ; S. C., L. R. 16, I. A. 107). The last sentence in Explanation IV, s. 13, means that a decision, against which an appeal pending, is not a final decision within the meaning of the section. The Legislature intended that, for the purposes of the section, a decision should be regarded as final unless an appeal from it had been made. *Balkishan v. Kishan Lal* (11 All. 148) dissented from. A decision is not the less final within the meaning of the section because the decision which has affirmed it is itself liable to appeal. *Held*, therefore, that when the Assistant Collector decided the second suit, his decision in the first suit was not a final one within the meaning of the section, and he was therefore right in refusing to allow that decision to bar the adjudication of the claim in the second suit in respect of the years 1295, 1296 and 1297 Fasli ; but as that decision became final, for the purposes of the section, when the appeal against it was dismissed by the District Judge, the latter was right in holding that

Code of Civil Procedure
(XIV of 1882.)—(Contd.).

under Explanation II of the section the Assistant Collector's decision in the first suit barred any adjudication on his part of that claim, and that, as the District Judge's decree dismissing M.'s appeal had been affirmed, and the Assistant Collector's decision had thus become final, the District Judge's decree decreeing K.'s appeal should be affirmed. *Bholabhai v. Adesang* (9 Bom. 81), distinguished : no. 70.

s. 43.

Held, that when a plaintiff omits to sue for, or relinquishes, any portion of his claim; a second suit for that portion is barred : no. 34.

s. 57(a).

Where a Munsif returned a plaint under s. 57(a), Code of Civil Procedure, to be presented to the proper Court, and the District Judge, reversed the order and remanded the case for disposal on the merits : *held* that the District Judge's order was not one under s. 562, Code of Civil Procedure, but one directing the Munsif to proceed with the trial of the suit, and was not appealable. *Held*, also, that the District Court's order for refund of the stamp was *ultra vires* and erroneous : no. 74.

s. 368.

See No. 75.

s. 562.

See Code of Civil Procedure, s. 57(a).

s. 583.

Restoring possession of tenant who has been ejected : execution of decree : *see* no. 56.

s. 588(6).

An order returning a memorandum of appeal for presentation to the proper Court does not come under s. 588 (6) or any of the clauses of s. 588 of the Code of Civil Procedure, and is therefore not appealable : no. 68.

s. 622.

1. Judicial Commissioner's jurisdiction to revise, under s. 622, Code of Civil Procedure, an order passed by Deputy Commissioner purporting to cancel the sale of an under-proprietary tenure in execution of a rent decree : *see* no. 63.

Code of Civil Procedure
(XIV of 1882.)—(Contd.).

2. The revisional jurisdiction of the Court of the Judicial Commissioner under s. 622, Code of Civil Procedure, read with s. 135 of the Oudh. Rent Act, is restricted to those cases where the course of appeal lies to the Judicial Commissioner under ss. 119, 119B, of the latter Act, and does not extend to those cases where the course of appeal lies to the Board : no. 68.

Compensation.

—for tenant's improvements : *see* cases under Oudh Rent Act, ss. 22—27.

Court-fee.

1. *Held*, that when a landlord sues for arrears of rent the Court-fee should be calculated on the aggregate sum claimed, irrespective of the number of Kists or instalments of which it may be made up : no. 37.

2. Proper—in suit for ejectment of tenant : *see* no. 38.

Court Fees Act (VII of 1870).

s. 7.

Proper Court-fee in suit for ejectment of tenant : *see* no. 38.

s. 13.

Where a Munsif returned a plaint under s. 57(a), Code of Civil Procedure, to be presented to the proper Court, but the District Judge reversed such order and remanded the case for trial on the merits, and also ordered the stamp on the memorandum of appeal to be refunded, under s. 13, Act VII of 1870 : *held*, that the order for refund of the stamp was *ultra vires* and erroneous : no. 74.

Court of Wards.

Held, that it is anomalous and improper for District Officers in their judicial capacity to deal with suits preferred by themselves either as Managers of estates or as the Agents of Government : no. 42.

"Decree of Court."

Meaning of the words—in ss. 52 and 71, Oudh Rent Act : *see* no. 58.

Deputy Commissioner.

Trial by—of suit preferred by himself either as Manager of an estate or Agent of Government : *see* no. 42.

Distress.

Second—for a portion of the same arrear is illegal : *see* no. 3.

Ejectment.

1.—by notice : *see* cases under Oudh Rent Act, ss. 54, 55.

2. Suit to contest notice of — : *see* cases under Oudh Rent Act, s. 108 (8).

3.—by suit : *see* cases under Oudh Rent Act, ss. 62, 108 (4).

Ejected tenant.

Mode of restoring—to possession : *see* no. 56.

Enhancement.

—of rent : *see* cases under Oudh Rent Act, s. 33.

Execution of decree.

1. Time for making application for — : “fresh process” : *see* nos. 23, 24.

2. Restoring possession of tenant who has been ejected by order of first Court which has been reversed in appeal : — of Appellate Court : *see* no. 56.

“Final decision.”

As to what is to be considered a — with- in the meaning of Explanation IV, s. 13, Code of Civil Procedure, *see* no. 70.

General Clauses Act (I of 1868).

s. 2 (4).

Held, (inter alia) that “years” in s. 132, Oudh Rent Act (XXII of 1886) must, with reference to s. 2 (4) of the General Clauses Act, be construed as meaning years reckoned according to the British Calendar : no. 65.

Grove.

Owner of — land cannot be ejected by a notice of ejectment : no. 18.

“Haqq chaharam.”

A Settlement Court decree granting a *birt* of — in the *nikasi* of a whole village gives the *birtdars* nothing more than a right to retain one-fourth of the gross assets of the whole village, whatever they may be, from year to year. As to the respective rights of the Talukdar and such *birtdars* : *see* no. 62.

Improvements.

Payment of compensation for tenant's — : *see* cases under Oudh Rent Act, s. 22—27.

Interest.

Arrears of rent are liable to — : no. 16.

Intervenor.

See cases under Oudh Rent Act, s. 138.

Judgment.

It is the duty of a Rent Court to decide every question raised in the suit, an adjudication on which is necessary for the decision of the suit : no. 59.

Jurisdiction.

1. Lease for a term of years : — of Rent Courts to enquire into and determine the genuineness and validity of : *see* no. 10.

2. *Held*, that there is nothing in the Oudh Rent Act [XIX of 1868], empowering a Rent Court, to determine the rent payable by a tenant for land on which rent has not been previously paid : no. 15.

3. Suit for arrears of rent against the heirs of a deceased tenant, who have taken over the holding, is cognizable in the Revenue Courts : no. 69.

4. A suit by a tenant against a sub-tenant at will for recovery of the land on the ground that the former had determined the will, is exclusively cognizable in the Revenue Courts under s. 108 (4), Oudh Rent Act : no. 74.

5. The death of defendant *pendente lite* in suit under s. 108 (15), Oudh Rent Act, does not oust the — of the Revenue Courts : no. 75.

Kanungoes and Patwari's Act (IX of 1889.)

ss. 9, 13, 15.

1. The revenue chargeable on a parcel of land situate in the village of B. had been fixed by the Settlement Officer, in order to serve as a basis for calculating the rent payable by the inferior proprietors of such land to the superior proprietor, but such parcel of land was not separately assessed to land revenue. The revenue on the parcel was paid by the superior proprietor as an integral part of the revenue assessed on the whole village of B. The inferior proprietors of the parcel did not hold a sub-settlement of the whole village of B.

Kanungoes and Fatwari's Act
(IX of 1889)—(Contd).

Held, that the parcel of land was not an "estate," nor were the inferior proprietors the "landholders," but they were tenants on the superior proprietors "estate" of B, within the definition given in s. 9, Act IX of 1889, and that they were therefore chargeable with patwari-cess, not patwari-rate : **no. 72.**

2. An underproprietor with whom a sub-settlement of a whole village had been made is not liable to pay patwari-cess to the superior proprietor : *see* **no. 73.**

"Kitkinadar."

A—(sub-lessee) is a "tenant" : **no. 46.**

Referred to in **No. 74.**

Lambardar.

A—, as such, has no authority to sue on behalf of himself and other sharers for profits : **no. 67.**

Lambardari dues.

The limitation for a suit to recover—is one year : **no. 27.**

Lease.

1. Landlords making use of printed forms of—are bound by the entire contents : **no. 7.**

2.—for a term of years : jurisdiction of Rent Courts to enquire into and determine the genuineness and validity of : *see* **no. 10.**

3. Perpetual— : cancellation of for arrears of rent : *see* **no. 31.**

Lessees.

1. Perpetual— : enhancement of rent of not by proceeding under Rent Act : **no. 36.**

2.—under decree of Settlement Court : ejectment for non-payment of rent : *see* **no. 58.**

Limitation.

See cases under Oudh Rent Act, s. 132.

Manager.

Held, that it is anomalous and improper for District Officers in their judicial capacity to deal with suits preferred by themselves either as a—of an estate or an Agent of Government : **no. 42.**

Memorandum of Appeal.

1. It is not the practice of the Court to allow a—to be considered as an application for revision : **no. 64.**

2. An order returning a—for presentation to the proper Court is not appealable : **no. 68.**

Nautor land.

Acquisition of—by tenant, *held*, under the circumstances, not to cause alteration in the area of the tenant's holding within the meaning of ss. 36 and 37, Oudh Rent Act : **no. 57.**

North-Western Provinces and Oudh Act
(XX of 1890.)

s. 54.

See cases under Oudh Rent Act, s. 119B.

Notice of ejectment.

1. A landlord can lawfully authorise his managing agent to issue a— : **no. 39.**

2. *Held*, that a—for portion only of a holding is on the face of it bad and must be cancelled [where the entire holding is assessed at a lump rental *bil-mukhta*] : **no. 40.**

3. If the—is insufficiently stamped at the time of issue, the deficiency cannot subsequently be made good : **no. 60.**

Notice of relinquishment.

See cases under Oudh Rent Act, s. 21.

Occupancy rights.

See Right of Occupancy.

Occupancy tenant.

Fixing rent of— : *see* **no. 55.**

Oudh Land Revenue Act (XVII of 1876.)

s. 2.

"Agricultural year" : *see* **no. 70.**

Oudh Local Rates Act (XVII of 1871.)

Cesses in Oudh are of two kinds *viz.* : ordinary cesses, and cesses leviable under the Oudh Local Rates Act, XVII of 1871 [now repealed by Act IV of 1878]. As regards the latter, landlords can recover from under-proprietors the proportion of the cess leviable from them under s. 6 of the act. As to the

Oudh Local Rates Act (XVII of 1871)—(Contd).

former, cesses in Oudh are under the order of Government included in the Government demand. The term "Government Demand" in a judgment, decree or proceedings of a Settlement Court, *held*, in the absence of a distinct provision to the contrary, to mean the Government demand calculated at 51½ per cent. of the average gross rental : **no. 19.**

Oudh Rent Act (XXII of 1886).

s. 3 (5).

The profits of *str*-land held by a co-sharer in a joint estate, to which the other sharers in the joint estate may be entitled, are not "rent" within the meaning of cl. (5), s. 3, Oudh Rent Act, and such co-sharer is not a "tenant" within the meaning of cl. (10) of the same section. A suit by a lambardar against a co-sharer for the share of the profits of a part of an estate due to himself and the other sharers in the estate is not maintainable, a lambardar, as such, having no authority to sue on behalf of himself and other sharers for profits : **no. 67.**

Followed in Syed Khurshed Ali v. Nawab Ali—1 Oudh Cas. 152.

s. 3 (10).

1. The parties in this case stand in the relation of *thekeedar* (lessee) and *kitkinadar* (sub-lessee). A "tenant" under the Oudh Rent Act is one who, not being an underproprietor, is liable to pay money, etc., on account of the use of land. *Held*, that as the *kitkinadar* is one who is liable to pay money on account of the use of land he is therefore a tenant : **no. 46.**

Referred to in No. 74.

2. Co-sharer in joint estate liable to pay profit of *str*-land to his co-sharers, is not a "tenant" within the meaning of s. 3 (10) Oudh Rent Act : **no. 67.**

s. 4.

Acquisition of *nautor* land by tenant, *held*, under the circumstances, not to cause alteration in the area of the tenant's old holding within the meaning of ss. 36 and 37, Oudh Rent Act : *see no. 57.*

s. 5.

1. The fact that a person has lost, no matter how, all proprietary rights superior and subordinate puts him in a position to claim a right of occupancy : **no. 4.**

Oudh Rent Act (XXII of 1886)—(Contd).

2. *Held*, that the plaintiff, having accepted land in satisfaction of his claims to subordinate rights in the estate of the defendant, became liable to pay rent for all other lands in his possession and was estopped from pleading a right of occupancy in such other lands : **no. 17.**

3. *Held*, that the less criminal tribes of the Amahat zemindars (to which class plaintiff-appellant belongs,) though they have forfeited and lost all proprietary rights, and their subordinate rights as existing at the annexation, are yet entitled to occupy their lands at a fixed rent. They are not excluded from the benefits of s. 5 of the Rent Act, but may have a good claim under the section : **no. 30.**

4. *Held*, that though there is nothing to prevent the parties to a sale from bargaining themselves out of the provisions of section 5 of the Rent Act, yet when no mention is made of *str* in the deed of sale, the seller retains any rights he may have under the section : **no. 32.**

5. Holders of a heritable non-transferable lease of a whole village have rights superior to those of occupancy tenants : *see no. 36.*

6. *Held*, that the word "lost" in s. 5 of the Oudh Rent Act was intended to cover all cases in which a proprietor of land has either voluntarily or by operation of law deprived himself permanently or temporarily of the power to exercise full proprietary right over his property. *Indersen v. Naubat Singh*—7 All. 555—*followed*. For the establishment of an occupancy right under the provisions of s. 5 of the Oudh Rent Act, two things are requisite : (1) that the claimant shall have occupied the land in question before the 13th February 1856; and (2) that he shall have been in possession as proprietor of the particular village or estate in which the land is situate at some time between the 12th February 1826 and the 13th February 1856. As regards persons admitted to settlement, the existence of these facts will ordinarily be presumed against the party contesting the claimant's ex-proprietary right of occupancy : **no. 43.**

7. The words "proprietor" and "proprietary" in s. 5 refer to subordinate as well as superior proprietors : **no. 49.**

s. 8.

Held, that landlords making use of printed forms of lease are bound by the entire contents of that form and not by such portions only as may be filled in writing to render the form intelligible : **no. 7.**

Oudh Rent Act (XXII of 1886).

s. 21.

1. *Held*, that sections 4 and 21 Oudh Rent Act (XIX of 1868=s. 4 and 21, Act XXII of 1886) read together show that section 21 does not apply to tenants holding under written agreements but to those tenants only who are allowed to hold from year to year without any written agreement: **nos. 6 and 7.**

2. *Held*, that there is nothing in s. 21 of the Rent Act which requires a notice of relinquishment to be given in writing in the first instance. *Held*, further, that when a tenant holds under a lease for one year his tenancy ceases at the end of the year and the landlord can re-enter on possession: **no. 11.**

s. 22.

1. When a plea of uncompensated improvements is raised in a suit to contest a notice of ejectment, *held*, that it is sufficient for the Court to satisfy itself that there is reasonable ground for believing that the plaintiff is entitled to some compensation. The procedure under s. 25 Rent Act [XIX of 1868=s. 25, Act XXII of 1886] can be followed only on application by one of the parties: **no. 5.**

Cancelled by No. 35.

Restored by „ 41.

2. Principles on which compensation for tenants' improvements should be determined, discussed: **no. 26.**

Referred to in No. 44.

3. *Held*, that until the tenant has been compensated for any improvement made to the whole or any portion of his holding (*jothe*) he shall not be ejected from or be subject to enhancement of rent for any portion thereof, but that, in each case the extent of the holding is an issue of fact: **no. 28.**

Approved in No. 41.

4. *Held*, that payment for unexhausted improvements is a pre-requisite to enable a landlord to eject. Rent Act Ruling no. 35 of 1882 is irreconcilable with the real meaning of Act XIX of 1868, and diametrically opposed to Rent Act Rulings Nos. 8 of 1871 and 28 of 1878, and opposed to Financial Commissioner's decision in case No. 5 of 1870.

Held, further, that payment for unexhausted improvements is a pre-requisite to enable a landlord to eject: **no. 41.**

Oudh Rent Act (XXII of 1886)—(Contd.).

5. *Held*, that the words of s. 22, Act XIX of 1868, [corresponding with s. 22, Act XXII of 1886], "if any tenant...make any improvement on the land in his occupation" must be read as meaning "if any tenant-at-will makes any improvements on the land which is in his occupation as such tenant"; and that if a man holds some lands in a *mahal* as a mere tenant-at-will, and as regards other land in the *mahal* occupied by him has rights other than those of a mere tenant-at-will and makes improvements in the latter portion of his holding, he cannot by virtue of such improvements claim the benefit of s. 22, as regards the former portion of his holding: **no. 44.**

Santi Kurmi v. Iltifat Ahmad—Financial Commissioner's Select Case 5 of 1870; R.A.R. no. 26—*referred to.*

s. 25.

1. *Held*, (*inter alia*), that the procedure under s. 25, Act XIX of 1868 [corresponding with s. 25, Act XXII of 1886] can be followed only on application by one of the parties: **no. 5.**

2. In a case of compensation for tenant's improvements, to enable the Court to take into account the indirect assistance given by the landlord, it is necessary for the landlord to prove, either that at the time of making over the land, the tenant was allowed to take the land on a favorable rent on the express understanding that the tenant was to make improvements; or that subsequently to the making thereof, the landlord refrained from exacting the full rent: **no. 20.**

Held, that before either party has a right to apply under s. 25, Act XIX of 1868 [corresponding with s. 25, Act XXII of 1886], some compensation must have been tendered and not agreed to: **no. 33.**

s. 33.

1. *Held*, that defendants, the holders of a heritable non transferable lease of a whole village, are not tenants with rights of occupancy under the Oudh Rent Act, and that section 32, Act XIX of 1868 [corresponding with section 33, Act XXII of 1886] cannot apply to them. *Held*, also that the rent to be paid by the defendants can only be determined by a Settlement Officer under ss. 40 and 181 of Act XVII of 1876: **no. 36.**

2. The defendant was held by the Commissioner, in his order, dated 27th August 1884, to be a tenant with a right of occupancy,

Oudh Rent Act (XXII of 1886)—(Contd.).

but no rent was then fixed, and a dispute as to its amount having arisen the Commissioner in March 1888, decided that plaintiff was entitled to have rent fixed in pursuance with the provisions of s. 33 of the Rent Act. *Held*, that the Commissioner was right in deciding that where, as here, an occupancy tenant's rents have never been fixed and the parties dispute as to its amount, such amount can be fixed under s. 33, Act XXII of 1886: **no. 55.**

s. 36.

Held, that s. 36 is applicable to a co-sharer holding, as tenant, land other than *str*: *see no. 54.*

s. 37.

1. Where a single plot on which a house had stood was given to a tenant on rent: *Held*, (1) that it was not shown that such plot was given otherwise than as a separate holding—*independent* of the land previously held by the tenant—and that therefore there was no proof of alteration of area as a whole. *Held*, also, (2) that a *thekedar*, unless expressly authorised by the terms of the *theka* to alter the area and rent of tenants, is not competent to bind the landlord with a new implied contract with the tenant, for it is expressly declared in s. 68, Act XXII of 1886, that a *thekedar* does not acquire any of the rights mentioned in section 67, one of which is the right conferred by section 36: **no. 52.**

2. *Held*, that s. 36 is applicable to a co-sharer holding, as tenant, land other than *str*: *see no. 54.*

3. A tenant of long standing who held some 61 bighas of land took up in 1295 Fasli "*nautor*" land of about 4 bighas and contested a notice of ejectment therefrom on the grounds (a) that he cannot be ejected from a portion of his holding and (b) that the area of his holding having been altered in 1295 Fasli he is entitled to the protection given by section 36 of the Oudh Rent Act. *Held*, that the acquisition of "*nautor*" land in 1295 Fasli in no way "*altered the area*" of the existing "*holding*" of 61 bighas, or changed the rent of that holding. To decide otherwise would be to abrogate to a great extent the provisions of the third clause of section 4 of the Rent Act, provisions to which sections 36 and 37 have by explanation II (section 37) been made expressly subject: **no. 57.**

Oudh Rent Act (XXII of 1886)—(Contd.).**s. 48.**

A suit against the heirs of a deceased occupancy tenant, for recovery of arrears of rent accrued due in the lifetime of the deceased, the defendants having taken over the holding, is cognizable in the Revenue Courts: **no. 69.**

s. 52.

1. Section 41 of Act XIX of 1868, [corresponding with section 52, Act XXII of 1886] is silent as to the conditions on which a decree for ejectment may be made; and in allowing two months' grace in this case, the Court exercised a wise discretion: **no. 29.**

2. It is doubtful whether perpetual leases decreed to zamindars, whose claim to sub-settlement was dismissed, can be cancelled by the Rent Courts under s. 41, Act XIX of 1868 [corresponding with s. 52, Act XXII of 1886] on account of unsatisfied decrees for arrears of rent; but in any case the lease only would be cancelled, and the order for ejectment would not affect the lessees' zamindari rights, or their rights to retain all that they are entitled to independent of the lease: **no. 31.**

Referred to in No. 58.

3. *Held*, that lessees holding under titles created by a Settlement Court invested with powers of a Civil Court cannot be ejected by process under the Rent Act on default of payment of the rent due from them: **no. 58.**

Dissented from in Sabbu v. Sita Ram. Select Case 282.

s. 54.

Owner of grove land cannot be ejected by notice: **no. 18.**

s. 55.

1. *Held*, (*inter alia*) that a landlord can lawfully authorise his Managing Agent to issue notices of ejectment: **no. 39.**

2. *Held*, that a notice of ejectment for portion only of a holding is on the face of it bad and must be cancelled [where the entire holding is assessed at a lump rental—*bil-mukhta*]: **no. 40.**

3. A talukdar served a notice of ejectment, to which an eight anna stamp was affixed, on a so-called *shikmi* tenant of *str* land. On suit to contest the notice the Lower

Oudh Rent Act (XXII of 1886)—(Contd.).

Court found that the tenant was an ordinary tenant, and allowing the talukdar to make up the deficiency of Court-fee pronounced the notice good. *Held*, that the notice was bad when served, and could not become a good notice by reason of something more being afterwards done by the talukdar : **no. 60.**

s. 60.

The appellant on his objection to notice of ejectment being dismissed was ejected from his holding. He appealed to the Judicial Commissioner, who decreed his appeal, and he then applied to the Rent Court to be put in possession of the land from which he had been ejected. The Lower Appellate Court held that the Rent Court was right in declining on the Judicial Commissioner's decree to direct repossession to be given by way of execution. *Held*, that the Rent Act had to be read along with the Civil Procedure Code, and section 583 fully empowers the Court, whose decision is reversed, to give relief by restitution or otherwise, and that as the mode of executing a decree upholding a notice of ejectment is by taking aid from the Deputy Commissioner, it follows that a similar course must be resorted to when the notice is finally cancelled : **no. 56.**

s. 62.

1. It is not correct to say that the only suits for ejectment known to the Rent Act are under section 40, Act XIX of 1868 [corresponding with s. 61, Act XXII of 1886]. That section contains one of several "general provisions" regarding ejectment. All suits for ejectment of a tenant, on whatever ground sought, fall under cl. 4, s. 83, Act XIX of 1868 [corresponding with s. 108, cl. 4, Act XXII of 1886] and are cognizable only by the Rent Courts : **no. 25.**

Approved in No. 38. Cancelled by No. 48.

2. Ground for ejectment of tenant by suit : **see no. 48.**

3. Appellants sought, under cl. 4, s. 108, Act XXII of 1886, to eject a tenant upon whom a notice of ejectment under Act XIX of 1868, had been served, and who had unsuccessfully contested it. The Lower Appellate Court held that such a suit for ejectment can only be brought under the provisions of s. 62, Act XXII of 1886. *Held*, that s. 108, cl. 4, Act XXII of 1886, provides generally for all suits brought by a landlord to eject a tenant : **no. 51.**

Oudh Rent Act (XXII of 1886)—(Contd.).

Dissented from in No. 61 infra.

4. In a suit by a landholder to eject a tenant without rights of occupancy and not holding under a special agreement or Decree of Court : *held*, that such a suit is not maintainable unless founded on some of the grounds (a), (b), (c), or (d), set forth in s. 62 of the Rent Act : **no. 61.**

No. 51 *dissented from.*

s. 63.

If a tenant's liability to ejectment is not decided till after the time fixed for his ejectment (i. e. 30th June), he can be ejected in the following year without the issue of a fresh notice : **no. 12.**

s. 67.

The parties are co-sharers in a village and respondent holds lands which by partition enforced on 1st July 1886, have now been included in the new *patti* of appellant who seeks to eject the respondent. *Held*, that as respondent did not hold the land as *str* he must have done so as a mere tenant, accountable for the rent to the body of *pattidars*, and therefore is not excluded by section 67, Act XXII of 1886, from the statutory privileges of a tenant in respect of the land in suit : **no. 54.**

s. 69.

Rent Courts are competent to enquire into and determine the genuineness and validity of leases for a term of years : **no. 10.**

s. 71.

"Decree of Court" : meaning of : **see no. 58.**

s. 86.

Second distress for the same arrears is illegal : **no. 3.**

s. 108.

1. A suit by a tenant against a sub-tenant-at-will for recovery of the land on the ground that the former had determined the will, is exclusively cognizable by the Revenue Courts : **no. 74.**

2. The jurisdiction of a Revenue Court is not ousted by the death of the defendant *pendente lite* in a suit under s. 108 (15), Act XXII of 1886 : **no. 75.**

Oudh Rent Act (XXII of 1886)—(Contd.).

s. 108 (2).

1. *Held*, that the manager of an estate of which Government has taken charge under the Oudh Talukdar's Relief Act, has the same powers only for the realization of rent that the Talukdar would have had. If then the Talukdar made a fraudulent contract, which he could not avoid, the manager cannot avoid such contract : **no. 1.**

2. *Held*, that when a proprietor's right in land is extinguished by a decree of Court such proprietor may for the purposes of a suit under cl. 2, s. 83; Rent Act (XIX of 1868=s. 108, cl. 2, Act XXII of 1886) and pending the determination of his status by a Court of competent jurisdiction be deemed to be a tenant with a right of occupancy in the land held by him in cultivating occupancy. *Held*, further, that the Rent Courts are competent to determine the amount of rent payable by such tenant : **no. 9.**

Dissented from in Naipal Kuar v. Shambhu Bakhsh (2 Oudh Cases 269).

3. *Held*, that there is nothing in the Oudh Rent Act empowering a Rent Court to determine the rent payable by a tenant for land on which rent has not been previously paid : **no. 15.**

4. *Held*, that when a Settlement Court has fixed the rent payable by an under-proprietor, a Rent Court cannot alter such decree, but that the rent so decreed must be held to include everything which the under-proprietor should pay except local rates : **no. 22.**

Superseded by Rent Appeal (unreported) **no. 3 of 1892 : see no. 73.**

5. *Held (inter alia)*, that in a suit against a lessee for arrears of rent the lessee's surety is also liable to be impleaded : **no. 24.**

Cancelled by No. 50.

6. *Held*, that when a landlord sues for arrears of rent the Court-fee should be calculated on the aggregate sum claimed, irrespective of the number of *kists* or instalments of which it may be made up : **no. 37.**

7. In a suit for arrears of rent due under a *theka* the plaintiff sought to implead as co-defendants the representatives of the lessee's surety. *Held*, that it is improper to implead a surety as defendant along with a tenant or lessee in a Rent Suit : **no. 50.**

No. 24 cancelled.

Oudh Rent Act (XXII of 1886)—(Contd.).

8. A settlement decree granting Respondents' predecessor in title a *birt* of *haqq chaharam* in the *nikasi* of a village (with possession of the village) gives the *birtdars* nothing more than a right to retain one-fourth of the gross assets of the village, whatever they may be, from year to year. The Talukdar is not under the decree restricted to a right to recover only a fixed rent charge amounting to the Government *jama* plus fifty per cent thereon. The *birtdars* are entitled only to what the Settlement decree gives them and no more. Whatever is not given to them by that decree belongs to the Talukdar under his paramount title. *Held*, that in this case the Talukdar was entitled to recover as rent from defendants three quarters of the gross *nikasi* whatever it might be, from year to year. *Held*, also, that a suit instituted in January 1891 to recover arrears of rent of the year 1295 Fasli was not time-barred under s. 132 of the Oudh Rent Act. The case (unpublished) of *Mehndi Ali Khan v. Chote Lal Singh*, decided by Currie, J. C., in September 1877 considered and followed : **no. 62.**

Dissented from in Jai Patter Singh v. Ram Rattan Lal (1 Oudh Cas. 124.)

9. A suit by a landlord against the heirs of a deceased occupancy tenant for recovery of arrears of rent accrued due in the life time of the defendants' father, the defendants having taken over the holding in succession to their late father, is cognizable by the Revenue Courts. The judgment of the majority of the judges in *Lekhraj Singh v. Rai Singh*—14 All. 381—followed : **no. 69.**

10. Liability of under-proprietors to pay patwari-rate or patwari-cess : **see no. 72.**

11. *Held*, (1) that a superior proprietor cannot recover, by suit under s. 108, cl. (2), Act XXII of 1886, read with s. 16, Act IX of 1889, the patwari-rate assessed under s. 13, Act IX of 1889, on a village separately assessed to revenue, from the under-proprietor with whom a sub-settlement of the whole village had been made; (2) and that a superior proprietor cannot recover patwari-cess from such an under-proprietor under s. 15, cl. (a), Act IX of 1889, by a suit under s. 108, cl. (2), Act XXII of 1886. *Per Howell, J. C.*, Rent Act Ruling No. 22 of 1874 is practically superseded by the Ruling of Burkitt, J. C., in Rent Appeal No. 3 of 1892 (1), and the latter ruling must be followed in respect of claims for patwari-rate or patwari-cess : **no. 73.**

Oudh Rent Act (XXII of 1886)—(Contd).**s. 108 (4).**

1. It is not correct to say that the only suits for ejectment known to the Rent Act are under s. 40, Act XIX of 1868 [corresponding with s. 61, Act XXII of 1886]. That section contains one of several "general provisions" regarding ejectment. All suits for the ejectment of a tenant, on whatever ground sought, fall under cl. 4, s. 83, Act XIX of 1868, [corresponding with s. 108, cl. 4, Act XXII of 1886], and are cognizable only by the Rent Courts: **no. 25.**

Approved in No. 38. Cancelled by No. 48.

2. *Held*, that under clause (4), section 83 of the Oudh Rent Act, XIX of 1868 [corresponding with cl. (4), s. 108, Act XXII of 1886], a landlord can sue for the ejectment of a tenant on any grounds.

Held, further, that the cause of action arose when the tenants refused to give up their holding.

Also, that the Court-fee in such suits, when the Government Revenue has not been separately assessed on the holding, should be calculated under section 7 V., cl. (d) of the Court-fees Act on the market-value of the land: **no. 38.**

3. A landlord sought to eject a tenant under cl. 4, s. 83, Act XIX of 1868 [corresponding with s. 108, cl. 4, Act XXII of 1886], on the ground that the tenant declined to pay enhanced rent. *Held*, to succeed under cl. 4, s. 83, Act XIX of 1868, the landlord must prove either (1) non-payment of arrears of rent or (2) breach of conditions of lease.

This ruling over-rules the *obiter-dictum* in Rent Act Ruling No. 18, and also the ruling on this point (*viz.*, the grounds warranting "ejectment," under s. 83, cl. 4, Act XIX of 1868), in Rent Act Ruling No. 25: **no. 48.**

4. Appellants sought, under cl. 4, s. 108, Act XXII of 1886, to eject a tenant upon whom a notice of ejectment had been served under Act XIX of 1868, and who had unsuccessfully contested it. The Lower Appellate Court held that such a suit for ejectment can only be brought under the provisions of s. 62, Act XXII of 1886. *Held*, that s. 108, cl. 4, Act XXII of 1886, provides generally for all suits brought by a landlord to eject a tenant: **no. 51.**

Dissented from in No. 61 infra.

Oudh Rent Act (XXII of 1886)—(Contd).

5. *Held*, that lessees holding under titles created by a Settlement Court invested with powers of a Civil Court cannot be ejected by process under the Rent Act in default of payment of rent due from them: **no. 58.**

Dissented from in Sabbu v. Sita Ram. Select Case 282.

6. In a suit by a landholder to eject a tenant without rights of occupancy and not holding under a special agreement or decree of Court: *Held*, that such a suit is not maintainable unless founded on some of the grounds (a) (b), (c) or (d), set forth in s. 62: **no. 61.**

No. 51 dissented from.

7. A suit by a tenant against a sub-tenant at will for recovery of his land on the ground that he had determined the will, when he required the defendant to vacate his land, but that the defendant held over, is a suit by a landlord, as defined in Act XXII of 1886, for ejectment of a tenant, as defined in the same Act, and therefore is exclusively cognizable by the Revenue Court under s. 108, cl. 4 of that Act. *Jey Singh v. Moorise* (2 N.W. P., H. C. R. 98), Rent Act Ruling No. 46; *Chiddu v. Narpat*, (5 W.N. 332)—referred to: **no. 74.**

s. 108 (6).

1. *Held*, (*inter alia*) that Rent Courts are not empowered to enquire into and determine rights in land other than rights of occupancy: **no. 2.**

2. In a suit under cl. 6, s. 83, Act XIX of 1868, [corresponding with cl. 6, s. 108, Act XXII of 1886], the plaintiff's claim to a right of occupancy was disallowed because he had mortgaged certain subordinate rights and failed to redeem them. *Held*, that the finding of the Lower Courts was wrong as if the plaintiff had redeemed or could still redeem any subordinate rights, he would not be in a position to claim a right of occupancy. The fact of plaintiff's having lost, no matter how, all proprietary rights superior and subordinate puts him in a position to claim a right of occupancy: **no. 4.**

3. The claim of the plaintiffs (to establish a right of occupancy, under cl. 6, s. 83, Act XIX of 1868—corresponding with cl. 6, s. 108, Act XXII of 1886), who styled themselves *Bartia* zemindars, was dismissed on the ground that they never held the *kabuliyat* of the village and therefore do not fall under the purview of s. 5, Act XIX of 1868 (corres-

Oudh Rent Act (XXII of 1886)—(Contd.).

ponding with s. 5, Act XXII of 1886). *Held* that the words "proprietor" and "proprietary" in s. 5, refer to subordinate as well as superior proprietors : **no. 49.**

s. 108 (8).

1. When a plaintiff in a suit under cl. 8 s. 83 Rent Act, (XIX of 1868=s. 108, cl. 8, Act XXII of 1886), contests a notice of ejectment on the ground, that the land in respect of which notice has issued is his *str* : *held* that the only issue for determination by a Rent Court is whether plaintiff is a tenant under the Rent Act. *Held*, also, that Rent Courts are not empowered to enquire into and determine rights in land other than rights of occupancy : **no. 2.**

2. When a landlord issues a notice of ejectment and the tenant institutes a suit to contest such notice and notice is cancelled on the ground that there exists some objection to the tenant's ejectment : *held*, that it is not competent for the landlord to issue another notice in respect of the same land without taking measures to remove the objection : **no. 8.**

Approved in No. 41.

3. *Held*, in continuation of Rent Act Ruling No. 2, that when an agreement purporting to confer a title in perpetuity is pleaded in a suit under s. 83, cl. 8, (Act XIX of 1868=s. 108, cl. 8, Act XXII of 1886) the Court on being satisfied that there is *prima facie* reason to believe the agreement genuine should cancel the notice of ejectment and leave the title to be adjudicated in a Civil Court. *Held*, also, that Rent Courts are competent to enquire into and determine the genuineness and validity of leases for a term of years : **no. 10.**

4. Concluding para. of Case II, para. 9 Financial Commissioner's Circular no. 30 of 22nd March 1870 cancelled and *held*, that where a tenant brings a suit to contest a notice of ejectment and such suit is given against him, the order simply affirms plaintiff's grounds for claiming non-liability to ejectment invalid and if such order be passed subsequent to 15th June of one year, plaintiff is liable to be ejected by his landlord on 1st April of the ensuing year without issue of a second notice of ejectment : **no. 12.**

5. *Held*, that as long as there are trees standing in a grove or at any rate a sufficient number of trees to maintain the character of

Oudh Rent Act (XXII of 1886)—(Contd.).

a grove, the owner of the grove cannot be ejected from the land by a notice of ejectment. *But the landlord can sue for the ejectment of the tenant on the ground of his refusal to pay a reasonable rent* : **no. 18.**

NOTE.—Words in italics cancelled by No. 48.

6. *Held*, that a notice of ejectment for a portion only of a holding is bad on the face of it and must be cancelled : **no. 40.**

7. *Held*, that a tenant cannot contest a notice of ejectment on the ground that he has not received compensation for unexhausted improvements : **no. 35.**

Cancelled by No. 41.

8. The appellant on his objection to notice of ejectment being dismissed was ejected from his holding. He appealed to the Judicial Commissioner, who decreed his appeal, and he then applied to the Rent Court to be put in possession of the land from which he had been ejected, but without success. The Lower Appellate Court held that the Rent Court was right in declining on the Judicial Commissioner's decree to direct re-possession to be given by way of execution. *Held*, that the Rent Act has to be read along with the Civil Procedure Code, and section 583 fully empowers the Court whose decision is reversed, to give relief by restitution or otherwise, and that as the mode of executing a decree upholding a notice of ejectment is by taking aid from the Deputy Commissioner, it follows that a similar course must be resorted to when the notice is finally cancelled : **no. 56.**

9. If the notice when served is bad by reason of an insufficient stamp, the landlord cannot by subsequently making up the deficiency, render the notice valid : **no. 60.**

10. Plea of compensation in suit contesting notice of ejectment : *see* cases under Oudh Rent Act, ss. 22—25.

s. 108 (11).

1. A landlord having distrained a tenant's crops for arrears of rent the tenant instituted a suit under cl. 11, s. 83, Rent Act (XIX of 1868=s. 108, cl. 11, Act XXII of 1886) and obtained a decree removing the distress. The landlord made a second distress for the recovery of a portion of the same arrear of rent : *held* that the second distress

Oudh Rent Act (XXII of 1886)—(Contd.).

was illegal and the landlord's remedy lay in a suit under cl. 2, s. 83 (Act XIX of 1868=s. 108, cl. 2, Act XXII of 1886) : **no. 3.**

s. 108 (15.)

1. A share of profits does not become due until the close of the Fasli year, unless it can be established that a rendition of accounts took place before the end of the year : **no. 21.**

Differed from in No. 45.

Approved in No. 70.

2. *Held*, that a suit for share of profits must be brought within 3 years from the time when the profits fall due, or at the end of the agricultural year (as defined in s. 2, Act XVII of 1876) for which they are claimed. *Bhikham Khan v. Ratan Kuer* (1 All. 512) *followed*; No. 21 *differed from* : **no. 45.**

Referred to in No. 70.

3. A share-holder sued the defendant on the allegation that the monies in question were due from defendant's father who had been lambardar during the years for which profits were claimed, but who had died prior to this suit and was succeeded in the lambardarship by the defendant. *Held*, that a Rent Court has no power to decide a question which is in reality a claim to realise a debt owed by a deceased person. The claim would lie against the heirs of the deceased, if at all, and not against the defendant alone, nor in consequence of his being a successor to his father in the lambardarship : **no. 47.**

Ahmad-ud-din Khan v. Majlis Rai (5 All. 438, F. B.)—*referred to*.

4. *Held*, (*inter alia*) that a suit by a lambardar against a co-sharer for the share of the profits of part of an estate due to himself and the other sharers in the estate is not maintainable, a lambardar, as such, having no authority to sue on behalf of himself and other sharers for profits : **no. 67.**

Followed in *Syed Khurshed Ali v. Nawab Ali*—1 Oudh Cas. 152.

5. In the absence of custom regulating the practice, or when there is no agreement between the share-holders on the point, a share of profits becomes due to a co-sharer from the lambardar at the close of the agri-

Oudh Rent Act (XXII of 1886)—(Contd.).

cultural year as defined in s. 2, Act XVII of 1876, or in case there has been a rendition of accounts then from the date of the rendition. R. A. R. Nos. 21 of 1874 and 45 of 1886, and *Bhikham Khan v. Ratan Kuar*—1 All. 512—*referred to* : **no. 70.**

6. The jurisdiction of the Revenue Court is not ousted by the death *pendente lite* of the defendant in a suit by a co-sharer against a lambardar under s. 108, cl. 15, Act XXII of 1886. On the defendant's death his legal representatives should be brought on the record under s. 368, Code of Civil Procedure, read with s. 135, Act XXII of 1886, and the case should proceed as if such representatives had originally been lambardars, and been sued as such : **no. 75.**

s. 108 (16).

1. *Held*, that the limitation applicable to suits to recover lambardari dues is one year : **no. 27.**

2. In a suit by a talukdar to recover from the defendants the revenue assessed on their portions of the taluka, it was contended for the defendants that under their grandfather's Will they held their estates exempt from the payment of the Government Revenue. *Held*, that on the true construction of the Will, defendants were liable to pay and that they should pay through the talukdar. *Held*, also, that it is the duty of a Rent Court to decide every issue raised in the suit an adjudication on which is necessary for the decision of the suit : **no. 59.**

3. A suit by a lambardar against a co-sharer for the share of the profits of a part of an estate due to himself and the other sharers in the estate is not maintainable, a lambardar, as such, having no authority to sue on behalf of himself and other sharers for profits : **no. 67.**

Followed in *Syed Khurshed Ali v. Nawab Ali*—1 Oudh Cas. 152.

s. 116.

1. *See* No. 64.

2. A decree passed by a Collector on an appeal preferred under s. 116, cl. (a) of the Oudh Rent Act, from a decree passed by an Assistant Collector of the second class in a suit brought under cl. 16, s. 108, was appealed to the Commissioner, who returned the memorandum of appeal for presentation to the District Judge. *Held*, that the decree

Oudh Rent Act (XXII of 1886)—(Contd).

being an appellate decree of a Collector the appeal from it lay to the Commissioner under s. 116, cl. (b), and the District Judge was right in holding that he had no jurisdiction to entertain the appeal : no. 68.

s. 117.

See No. 66.

s. 119.

The revisional jurisdiction of the Court of the Judicial Commissioner, under s. 622, Code of Civil Procedure, read with s. 135 of the Oudh Rent Act, is restricted to those cases in which the course of appeal lies to that Court under ss. 119, 119B, of the Oudh Rent Act, and does not extend to those cases in which the course of appeal lies to the Board : no. 68.

s. 119B.

1. An appeal from an original decree of an Assistant Collector of the first class in a suit for arrears of rent instituted under Act XXII of 1886 before Part II of Act XX of 1890, by which the former Act was amended, came into force, had been preferred to the Commissioner, under s. 116, Act XXII of 1886 as it stood before its amendment by Part II of Act XX of 1890, and was still pending when it was transferred under s. 54, Act XX of 1890, to the District Judge, who disposed of the same. *Held*, that an appeal did not lie under s. 119B, Act XXII of 1886, a section inserted into that Act by Part II, Act XX of 1890, from the District Judge's decree to the Judicial Commissioner, inasmuch as the decree was not passed by the District Judge under Act XXII of 1886, but under s. 54 of Act XX of 1890. *Held*, also that inasmuch as a District Judge trying an appeal transferred to him under the second clause of s. 54 of Act XX of 1890 must be deemed for the purposes of such appeal to be a Commissioner and as if the Commissioner had disposed of the appeal under the first clause of that section his decree would, under s. 119 of Act XXII of 1886 as it stood before its amendment by Part II of Act XX of 1890, have been final, and the second clause of s. 54 of the latter act did not affect the finality of the decree to be passed by the District Judge, no appeal would lie to the Judicial Commissioner from the decree of the District Judge. *Held*, also, that there was no constitutional right of appeal from the decree of the District Judge, such a right, where it exists, being created by statute. *Jwala Prasad v. Salig Ram* (13 All. 575) distinguished. It is not

Oudh Rent Act (XXII of 1886)—(Contd).

the practice of the Court to allow a memorandum of appeal to be considered to be an application for revision : no. 64.

Followed in No. 66.

2. The decree of a District Judge passed in an appeal transferred to him for disposal under the second clause of s. 54 of Act XX of 1890, is not appealable to the Judicial Commissioner under s. 119B of the Oudh Rent Act, 1886. Rent Act Ruling no. 64, *followed*. Where if an appeal had been disposed of by the Commissioner, under the first clause of s. 54 of Act XX of 1890, instead of having been transferred to the District Judge for disposal, under the second clause of that section, the decree of the Commissioner would have been appealable to the Judicial Commissioner, under s. 119 of the Oudh Rent Act, 1886, as it stood before part II of Act XX of 1890 came into force; *held*, that the District Judge's decree in the appeal so transferred to him was appealable to the Judicial Commissioner, under s. 117 of the Rent Act as it then stood. The principle of the decision in Rent Act Ruling No. 64, *followed* : no. 66.

3. The revisional jurisdiction of the Court of the Judicial Commissioner under s. 622, Code of Civil Procedure, read with s. 135 of the Rent Act, is restricted to those cases in which the course of appeal lies to that Court under ss. 119 and 119B of the latter Act, and does not extend to those cases in which the course of appeal lies to the Board : no. 68.

s. 120A.

A Judge should not invite an unsuccessful party to apply for review of judgment in the event of his being able subsequently to produce an authority to which the attention of the judge was not called at the hearing of the case : no. 39.

s. 125.

1. *Held*, that the manager of an estate of which Government has taken charge under the Oudh Talukdars' Relief Act has the same powers only for the realization of rent that the Talukdar would have had. If then the Talukdar made a fraudulent contract, which he could not avoid the manager cannot avoid such contract : no. 1.

2. *Held*, that it is anomalous and improper for District Officers in their judicial capacity to deal with suits preferred by

Oudh Rent Act (XXII of 1886) —(Contd).

themselves either as Managers of estates or as the Agents of Government : no. 42.

s. 126.

A suit by a lambardar against a co-sharer for the share of the profits of a part of an estate due to himself and the other sharers in the estate is not maintainable, a lambardar, as such, having no authority to sue on behalf of himself and other sharers for profits : no. 67.

Followed in Syed Khurshed Ali v. Nawab Ali (1 Oudh Cas. 152.)

s. 127.

The recovery of rent under s. 127 of the Oudh Rent Act is not limited to one year's rent, but the limitation is the same as for the recovery of rent from a tenant occupying with the landlord's consent. Rent Appeal No. 191 of 1890 *dissented from* : no. 71.

s. 132.

1. *Held*, that a suit for a share of profits must be brought within three years from the time when the profits fall due, or at the end of the agricultural year (as defined in s. 2, Act XVII of 1876), for which they are claimed. *Bhikham Khan v. Ratan Kuar* (1 L. R., 1 All. 512), *followed*. *Ganeshi v. Laloo* (R. A. R. 21 of 1874), *differed from* : no. 45.

Referred to in No. 70.

2. *Held*, (*inter alia*) that a suit instituted in January 1891 to recover arrears of rent of the year 1295 Faslî was not time-barred under s. 132 of the Oudh Rent Act. The case (not published) of *Mehndî Ali Khan v. Chatar Lall Singh*, decided by Currie, J. C., in September 1877, *considered and followed* : no. 62.

3. Although it is reasonable that rent, the realization of which is regulated by the succession of seasons, should be calculated according to the agricultural year, and therefore that the last day of *jeth* in the Faslî Calendar, as being the end of the agricultural year, should be taken as the starting point of limitation, there is no reason whatever why the period allowed by s. 132, Act XXII of 1886, for the institution of a suit to recover arrears of rent should not be calculated according to the British Calendar. *Held*, therefore, that clause (4), s. 2 of the General Clauses Act, 1868, obliged the Courts to construe "years" in s. 132, Act XXII of 1886,

Oudh Rent Act (XXII of 1886) —(Contd).

as meaning years reckoned according to the British Calendar : no. 65.

4. The recovery of rent under s. 127 Oudh Rent Act, is not limited to one year's rent, but the limitation is the same as for the recovery of rent from a tenant occupying with the landlord's consent : no. 71.

s. 135.

1. The Revisional jurisdiction of the Court of the Judicial Commissioner under s. 622, Code of Civil Procedure, read with s. 135 of the Oudh Rent Act, is restricted to those cases where the course of appeal lies to that Court, under ss. 119, 119B of the latter Act and does not extend to those cases where the course of appeal lies to the Board : no. 68.

2. Death of defendant *pendente lite* in suit under s. 108 (15), Oudh Rent Act : bringing on representative of deceased defendant under s. 368, Code of Civil Procedure, read with s. 135, Oudh Rent Act : *see* no. 75.

s. 138.

1. The respondent sued a tenant for rent, who pleading payment to a third party, the appellant was made a party to the suit and on acknowledging receipt of the rent a decree was given against him, and the tenant was discharged from liability. *Held*, that the decree on the Court's finding on the facts ought to have been passed against the tenant and that the collection by the appellant was a distinct attack on the respondent's title which the Rent Court had no jurisdiction to decide further than was required to prove whether the respondent's claim for rent against the tenant ought to be decreed or dismissed. *Madho Prasad v. Ambar and others* (5 All. 503); *Gobind Ram v. Narain Das* (9 All. 394) *followed* : no. 53.

2. Where in a suit for arrears of rent a third party claimed the right to receive the rent of the land to which the suit related, and was accordingly made a defendant, and admitted having received the rent sued for, and the Lower Court limited the enquiry directed by s. 138 of the Rent Act to the rent actually sued for, without considering whether or not the tenants had previously paid rent to the third party; *held* that the Lower Court had decided the suit without making the enquiry contemplated by s. 138, that section contemplating an enquiry relating to a period prior to that for which rent is claimed by the plaintiff : no. 66.

Oudh Rent Act (XXII of 1886)—(Contd.).**s. 141.**

Held, that arrears of rent are liable to interest, absence of an express provision to this effect in Act XIX of 1868 notwithstanding; but it is for the Court in each case to determine whether under the circumstances of the case the liability should be enforced, and at what rate interest should be allowed: **no. 16.**

s. 145.

1. There is nothing in s. 118, Act XIX of 1868 [corresponding with s. 145, Act XXII of 1886] which provides that a process of execution pending in a Court shall cease and determine on the expiry of three years from the date of decree. It provides only that no fresh process shall issue after the lapse of three years from date of decree: **no. 23.**

Affirmed by No. 24.

2. *Held*, (affirming Rent Act Ruling 23) that there is nothing in s. 118, Act XIX of 1868, [corresponding with s. 145, Act XXII of 1886] providing that a process of execution on pending in a Court shall cease and determine on the expiry of three years from date of decree.

Seemle.—In a suit against a tenant for arrears of rent the lessee's surety is also liable to be impleaded: no. 24.

[Words in italics cancelled by No. 50.]

s. 155.

Two days after a sale held on the 20th September 1890 in execution of decree for rent, the respondents jointly petitioned the sale-officer, praying that the sale to the applicants might not be confirmed, on the ground that each of the petitioners had bid higher than the applicants, and that one of the petitioners had made a claim to pre-empt. This petition having been dismissed by the sale-officer on the 11th October 1890, and the result of the sale having been reported by him to the Court executing the decrees, that Court on the 11th November 1890, confirmed the sale to the applicants. The respondents having on the same date, the 14th November 1890, presented an appeal to the Deputy Commissioner against the sale-officer's order of the 11th October 1890, the Deputy Commissioner gave time to one of the respondents to pay the amount for the recovery of which the sale had been held, and, on his making such payment, passed an order purporting to

Oudh Rent Act (XXII of 1886)—(Contd.).

cancel the sale. *Held*, that no appeal lay to the Deputy Commissioner against the sale-officer's order of the 11th October 1890, that the Deputy Commissioner's order was wholly without jurisdiction, and that the Judicial Commissioner's Court had power to revise it under s. 622, Code of Civil Procedure: **no. 63.**

Referred to in No. 68.

Patwari-cess.

1. The inferior proprietors of a parcel of land which was not separately assessed to revenue, the inferior proprietors, also, not holding a sub-settlement of the whole village, were held liable to pay—: **see no. 72.**

2. An under-proprietor with whom a sub-settlement of a whole village had been made is not liable to pay—to the superior proprietor: **see no. 73.**

Patwari-rate.

See Patwari-Cess.

Perpetual lessees.

See Lease, Lessees.

Pre-emption.

See No. 63

Profits.

1. Suit for—: **see cases under s. 108 (15), Oudh Rent Act.**

2.—when due: **see nos. 21, 45, 70.**

3. Suit against representative (successor) of deceased lambardar: jurisdiction of Revenue Courts: **see no. 47.**

Relinquishment.

See cases under Oudh Rent Act, s. 21.

Rent.

1. Suit for arrears of—: **see cases under Oudh Rent Act, s. 108 (2).**

2. Enhancement of—: **see cases under Oudh Rent Act, s. 33.**

3. Profits of *str* land are not—within the meaning of s. 3 (5), Act XXII of 1886: **no. 67.**

Res-judicata.

See No. 70.

Right of occupancy.

1. See cases under Oudh Rent Act, s. 5.
2. Suit to establish a—: see cases under Oudh Rent Act, s. 108 (6).
3. Rent Courts are not competent to enquire into and determine rights in land other than rights of occupancy : no. 2.

Review.

A judge should not invite an unsuccessful party to apply for a—of judgment in the event of his being able subsequently to produce an authority to which the attention of the judge was not called at the hearing of the case : no. 39.

Revision.

1. The Judicial Commissioner has power under s. 622, Code of Civil Procedure, to set aside the order of a Deputy Commissioner cancelling the sale of an under-proprietary tenure in execution of a decree for arrears of rent after the same had been confirmed by the Court executing the decree : no. 63.

2. The revisional jurisdiction of the Court of the Judicial Commissioner under s. 622, Code of Civil Procedure, read with s. 135 of the Oudh Rent Act, is restricted to those cases where the course of appeal lies to the Judicial Commissioner under ss. 119 and 119B, of the latter Act, and does not extend to those cases where the course of appeal lies to the Board : no. 68.

Sale in execution of decree.

No appeal lies to the Deputy Commissioner against the order of a Deputy Collector, confirming the sale of an under-proprietary tenure in execution of a decree for arrears of rent : no. 63.

Sir.

Sale of proprietary rights : right of occupancy in—land : see no. 32.

Surety.

1. *Held, (inter alia)* that in a suit against a lessee for arrears of rent the lessee's surety is also liable to be impleaded : no. 24.

Cancelled by No. 50.

Surety—(Contd.).

2. A—should not be impleaded as co-defendant with a tenant in a suit for arrears of rent : no. 50.

No. 24 cancelled.

Tenant.

1. A co-sharer of *str* land in a joint estate is not a—within the meaning of s. 3 (10) of the Oudh Rent Act : no. 67.

2. A *kitkinadar* (sub-lessee) is a—with- in the meaning of s. 3 (10) of the Oudh Rent Act : no. 46.

Referred to in No. 74.

Thikadar.

Held, (inter alia) that a landlord is not bound by any alterations made by a—in the rent or area of a tenant's holding unless the—is expressly authorised to do so by the terms of his *thika* : no. 52.

Time for ejectment.

If in a suit to contest a notice of ejectment orders for the ejectment of the tenant are not passed till after the time fixed for the ejectment of the tenant, the tenant may be ejected in the following year without the issue of a fresh notice of ejectment : no. 12.

Trees.

See Groves.

Trespasser.

The recovery of rent under s. 127, Oudh Rent Act, from a—is not limited to one year's rent, but the limitation is the same as for the recovery of rent from a tenant occupying with the landlord's consent : no. 71.

Under-proprietor.

Liability of an—to pay patwari-rate : see nos. 72 and 73.

Years.

Held, (inter alia) that "years" in s. 132, Oudh Rent Act (XXII of 1886) must, with reference to s. 2 (4) of the General Clauses Act (I of 1868) be construed as meaning years reckoned according to the British Calendar : no. 65.

*Table showing corresponding Section of Act XIX of 1868 and
Act XXII of 1886.*

Act XIX of 1868.			Act XXII of 1886.		
Section 1 ...			Section 1.		
"	2	...	"	2.	
"	3	...	"	3.	
"	4	...	"	4.	
"	5	...	"	5.	
"	6	...	"	7.	
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"	12	...	"	12.	
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"	34	...	"	35.	
"	35	...			
"	36	...			
"	37	...	"	56.	
"	38	...	"	63.	
"	39	...	"	64. (?)	
"	40	...	"	61.	
"	41	...	"	52.	
"	42	...	"	53.	
"	43	...	"	55.	
"	44	...	"	59.	
"	45	...	"	60.	
"	46	...	"	66.	
"	47	...	"	72.	
"	48	...	"	73.	
Act XIX of 1868.			Act XXII of 1886.		
Section 49 ...			Section 74.		
"	50	...	"	75.	
"	51	...	"	76.	
"	52	...	"	77.	
"	53	...	"	78.	
"	54	...	"	79.	
"	55	...	"	80.	
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"	65	...	"	90.	
"	66	...	"	91.	
"	67	...	"	92.	
"	68	...	"	93.	
"	69	...	"	94.	
"	70	...	"	95.	
"	71	...	"	96.	
"	72	...	"	97.	
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"	74	...	"	99.	
"	75	...	"	100.	
"	76	...	"	101.	
"	77	...	"	102.	
"	78	...	"	103.	
"	79	...	"	104.	
"	80	...	"	105.	
"	81	...	"	106.	
"	82	...	"	107.	
"	83	...	"	108.	
"	—(1)	...	"	—(1).	
"	—(2)	...	"	—(2).	
"	—(3)	...	"	—(3).	
"	—(4)	...	"	—(4).	
"	—(5)	...	"	—(5).	
"	—(6)	...	"	—(6).	
"	—(7)	...	"	—(7).	
"	—(8)	...	"	—(8).	
"	—(9)	...	"	—(9).	
"	—(10)	...	"	—(10).	
"	—(11)	...	"	—(11).	
"	—(12)	...	"	—(12).	
"	83 (13)	...	Section 108 (13).		

Act XIX of 1868.	Act XXII of 1886.	Act XIX of 1868.	Act XXII of 1886.
Section —(14)... —(15)... —(16)... —(17)... —(18)... " 84 ... " 85 ... " 86 ... " 87 ... " 88 ... " 89 ... " 90 ... " 91 ... " 92 ... " 93 ... " 94 ... " 95 ... " 96 ... " 97 ... " 98 ... " 99 ... " 100 ... " 101 ... " 102 ... " 103 ...	Section —(14). —(15). —(16). —(17). —(18). " 109. " 110. " 111. " 112. " 113. " 114. " 115. " 116, 119. " 118. " 119. " 121. " 122. " 123. " 124. " 125. " 126. " 131. (?) " 128.	Section 104 ... " 105 ... " 106 ... " 107 ... " 108 ... " 109 ... " 110 ... " 111 ... " 112 ... " 113 ... " 114 ... " 115 ... " 116 ... " 117 ... " 118 ... " 119 ... " 120 ... " 121 ... " 122 ... " 123 ... " 124 ... " 125 ... " 126 ... " 127 ... " 128 ...	Section 129. " 130. " 132. " 133. " 134. " 135. " 137. " 138. " 139. " 140. " 142. " 143. " 144. " 145. " 146. " 147. " 148. " 149. " 150. " 151. " 152. " 153. " 154. " 155.



Rent Act Rulings: Judicial Commissioner's Court.

No. 1.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

RAM BAKSHI AND OTHERS (DEFENDANTS), APPELLANTS, *v.* CHANDI PRASAD, AGENT OF COURT OF WARDS (PLAINTIFF), RESPONDENT.

Oudh Talukdar's Relief Act (XXIV of 1870), s. 17—Fraudulent Contract.

Held, that the manager of an estate of which Government has taken charge under the Oudh Talukdar's Relief Act has the same powers only for the realization of rent that the Talukdar would have had. If then the Talukdar made a fraudulent contract, which he could not avoid, the manager cannot avoid such contract.

The plaintiff in this case is a manager of an estate of which Government has taken charge under Act XXIV of 1870. He sues to recover rent from the defendants at the rate specified in a deed of compromise filed by the defendants in the Settlement Court, in accordance with which the Settlement Court passed a decree. The defendants urged that at the time the compromise was effected, a separate private agreement was made in writing by the parties to the effect, that the Talukdar would not demand from defendants rent at the rate entered in the compromise but a far more moderate rent. The reason for this concession on the part of the Talukdar, is alleged to have been that the Talukdar hoped to obtain from other claimants to sub-proprietary rights terms as favourable to himself as those apparently agreed to by the defendants in the deed of compromise. The Court of first instance found that this separate agreement was actually made and acted upon and therefore enforced it. The first Appellate Court held the contract to have been illegal and fraudulent, and refused to give relief or to countenance the claim. The Deputy Commissioner appears to have been under the impression that the defendants were the plaintiffs. The point for determination in this case is whether the Talukdar could avoid the contract. If the Talukdar could

1871
21st Nov.

Nos. 1 & 2
1871.

not avoid the contract, the present plaintiff cannot avoid it, as under section 17 Oudh Talukdar's Relief Act the manager of an estate held under the Act has for the purpose of realizing and recovering rents and profits, the same powers as the Talukdar would have had for such purpose. The Talukdar having been a party guilty of fraud could not avoid the contract for no man can take advantage of his own wrong. The Talukdar with knowledge of the fraud acquiesced in the contract, in fact it was for his benefit the fraud was perpetrated, and he did an act importing an intention to stand by it, *viz.*, accepted rent from defendants at the rate of one-fourth instead of one-half the profits, and could not now avoid the contract. This being so, I must hold that the present plaintiff who is invested with the same powers as the Talukdar would have had, cannot avoid the contract. The Tahsildar's order must therefore be affirmed.

No. 2.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

RAJA MOHAMED AMEER HUSUN KHAN (DEFENDANT), APPELLANT,
v. ESREE SINGH (PLAINTIFF), RESPONDENT.

*Act XIX of 1868—s. 83, cl. 8—Nature of enquiry when Plaintiff pleads that the land is *str*—Jurisdiction of Rent Courts.*

When a plaintiff in a suit under clause 8, section 83 Rent Act, contests a notice of ejectment on the ground, that the land in respect of which notice has issued in his *str* : *held*, that the only issue for determination by a Rent Court is whether plaintiff is a tenant under the Rent Act.

Held, also, that Rent Courts are not empowered to enquire into and determine rights in land other than rights of occupancy.

The procedure in this case, although in accordance with the instructions contained in one of the Financial Commissioner's circulars, is in my opinion irregular, and I therefore deem it necessary to explain what appears to me to be the correct interpretation of the Oudh Rent Act in regard to suits of this nature. The defendant, special-appellant, issued a notice of ejectment on plaintiff in respect of 11 bighas, 1 biswa of land; plaintiff instituted this suit under clause 8, section 83 of the Rent Act to contest his liability to ejectment, and urged

as the grounds of his contention that the land specified in the notice was his *sîr* land. This is not one of the grounds on which a tenant may contest liability to ejectment as specified in section 37 of the Act, but if this contention is good, and the land from which the defendant seeks to eject plaintiff, is really plaintiff's *sîr*, it is evident that plaintiff is not a tenant as defined in the Rent Act, and that the provisions of Chapter V of that Act do not apply to him. The sole issue then which should have been tried in this case was: Is plaintiff a tenant under the Rent Act? In the determination of this issue the Court should have confined itself to an enquiry sufficient to satisfy itself whether there was reasonable ground for presuming that plaintiff was not a tenant, but an under-proprietor. Being satisfied on this point the Court should have cancelled the notice of ejectment, and left the parties to seek further remedy in a Court of competent jurisdiction. The Courts established under the Rent Act are not empowered to enquire into and determine rights in land, other than rights of occupancy. The order of the Commissioner of 12th September 1870 remanding this case for the trial of the issue as to whether the land in suit was plaintiff's *sîr* or not, was irregular, and the orders passed on this remand are invalid for want of jurisdiction. The plaintiff having made out a *prima facie* case that the land in suit is his *sîr*, and that consequently he is an under-proprietor and not a tenant, is entitled to have the notice of ejectment cancelled, but the order of the Commissioner, of 9th December 1870, affirming plaintiff's under-proprietary right in this land must be set aside for want of jurisdiction.

No. 3.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

SHEO CHARAN UPADHIA (PLAINTIFF), APPELLANT, *v.* SAYAD ABID HUSAIN (DEFENDANT), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 83, cls. 2, 11—Second distress.

A landlord having distrained a tenant's crops for arrears of rent the tenant instituted a suit under clause 11, section 83 Rent Act and obtained a decree removing the distress. The landlord made a second distress for

Nos. 3 & 4
1871.

the recovery of a portion of the same arrear of rent : *held* that the second distress was illegal and the landlord's remedy lay in a suit under clause 2, section 83.

The defendant distrained the plaintiff's crop for arrears of rent alleged to be due for 1277 Fasli and part of 1278 Fasli. The plaintiff instituted a suit and obtained a decree declaring the distraint illegal. The defendant then distrained a second time on account of the same arrear, and the Lower Courts have given a decree in defendant's favor. I am of opinion that a second distraint for the recovery of the whole or a portion of an arrear of rent, on account of which distress has already been made and disallowed, is illegal. The landlord's remedy in such a case is by suit and not by a second distress. The plaintiff is entitled to a decree.

No. 4.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

NIRANJAN SINGH (PLAINTIFF), APPELLANT, *v.* ABDUL BAQI
 (DEFENDANT), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 83, cl. 6—Loss of proprietary rights by mortgage—Claim for right of occupancy.

In a suit under clause 6, section 83 of the Rent Act, the plaintiff's claim to a right of occupancy was disallowed because he had mortgaged certain subordinate rights and failed to redeem them : *held*, that the finding of the Lower Courts was wrong as if the plaintiff had redeemed or could still redeem any subordinate rights, he would not be in a position to claim a right of occupancy. The fact of plaintiff's having lost, no matter how, all proprietary rights superior and subordinate puts him in a position to claim a right of occupancy.

1871
 22nd Nov.

This is a suit under clause 8, section 83 of the Rent Act. Plaintiff contests his liability to ejectment on the ground that he is possessed of a right of occupancy in the lands in regard to which notice of ejectment was issued by the defendant. The Court of first instance finds that plaintiff was one of the co-sharers of the village within thirty years next before 13th February 1856. But as it appears that after losing proprietary possession, plaintiff retained certain manorial rights, such as

Nos. 4 & 5**1871.**

fish, singharas, &c., and that he mortgaged these rights to defendant and has failed to prove that he ever redeemed them, the Court of first instance has found that plaintiff is not entitled to a right of occupancy, and this order has been confirmed on appeal. This finding is not good in law, because section 5 of the Rent Act declares that those tenants only can have a right of occupancy who have lost all proprietary right whether superior or subordinate. If the plaintiff then had redeemed or could now redeem the subordinate right mortgaged by him, he would not be in a position to claim a right of occupancy. But the mere fact of his once having possessed a proprietary right, and having entirely lost that right, no matter how, puts him in a position to claim a right of occupancy and to have his right affirmed, if he can fulfil the conditions required by section 5 of the Rent Act. One of those conditions has been found in his favour, *viz.* that he has been in proprietary possession of the village within thirty years next before the thirteenth day of February 1856. It is necessary that the case be remanded in order that enquiry may be made as to whether plaintiff cultivated or held the land in suit on 24th August 1866, and if so whether such land came into his occupation for the first time since 13th February 1856.

No. 5.*

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

MANSA AHIR (PLAINTIFF), APPELLANT, *v.* RAJA JAGPAL SINGH
(DEFENDANT), RESPONDENT.

Compensation for improvements.

When a plea of uncompensated improvements is raised in a suit to contest a notice of ejectment, *held*, that it is sufficient for the Court to satisfy itself that there is reasonable ground for believing that the plaintiff is entitled to some compensation. The procedure under section 25 Rent Act can be followed only on application by one of the parties.

This is a suit for cancelment of a notice of ejectment in respect of 15 bigahs 13 biswas on averment that plaintiff has

1871
22nd Nov.

* Cancelled by *Thakur Fazl Ali Khan v. Umrao*—R. A. R. 35 of 1882.
Restored by *Mangal v. Jawahir*—R. A. R. 41 of 1884.

Nos. 5 & 6
1871.

made improvements for which he has not received full compensation. The proper course for the Courts to have pursued in this case was to ascertain whether the plaintiff can show reasonable grounds for presuming that he is entitled to some compensation for improvements. It is not the duty of the Rent Courts in disposing of a suit under clause 8, section 83 of the Rent Act to enter into a detailed enquiry as to the nature and extent of the improvements or as to the amount of compensation still unsatisfied. The procedure to be followed in determining the amount or value of compensation is laid down in section 25 of the Rent Act, but the Court can proceed under that section only on an application filed by one of the parties. In a suit under clause 8, section 83 it is sufficient for the Court to satisfy itself that there is reasonable ground for believing that the plaintiff is entitled to some compensation. This being found the notice of ejectment should be cancelled, and the parties left to come to terms or to make application in due form for the assistance of the Court. In the present instance plaintiff asserts he has commenced, if not finished, constructing a well. The Court of first instance held that the well was not ready for irrigation, and the Court of first appeal remarked that the holding can hardly be considered to have been materially improved by commencing a well upon it. I am of opinion that the plaintiff has established a *prima facie* case to show that he has expended some capital on improvements, and that he is entitled to compensation for such outlay, and that under those circumstances the notice of ejectment must be cancelled. The landlord has his remedy by a suit for ejectment if he is of opinion that the tenant is not entitled to any compensation.

No. 6.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

RAJA SYAD NAWAB ALI KHAN (PLAINTIFF), APPELLANT, v. SHEO PRASAD, TENANT (DEFENDANT), RESPONDENT.

Act XIX of 1868, ss. 4, 21—Notice of relinquishment.

Held, that sections 4 and 21 Oudh Rent Act read together show that section 21 does not apply to tenants holding under written agreements but to those tenants only who are allowed to hold from year to year without any written agreement.

In this case plaintiff sues under section 83, clause 1 of the Oudh Rent Act, for the delivery of a kabooliyat or counterpart of a lease by defendant for 1279 Fasli in respect of 8 bigahs 11 biswas of land at a rent of Rs. 28. Defendant pleads that he gave notice of relinquishment. The Court of first instance held that defendant had not given a notice of relinquishment in writing and therefore the notice was under section 21 of Rent Act invalid, and also that the notice was not given to an agent authorised to accept it.

Nos. 6 & 7**1871.****1871
30th Nov.**

The Lower Appellate Court held that as defendant held in 1278 Fasli, under a written lease, section 21 did not apply to him under the provision of section 4, and further that under section 116 the plaintiff was not entitled to a counterpart of a lease as the parties did not agree in respect of the particulars which such counterpart was to contain, in fact that the plaintiff having tendered no lease was not entitled to a counterpart. In appeal it is urged that the Deputy Commissioner's order if correct renders section 21 of the Rent Act null and void. Reading section 4 in connection with section 21 of the Rent Act, I am of opinion that section 21 does not apply to tenants holding under a written agreement but only to tenants allowed to hold from year to year without any written agreement, and by the terms of that agreement both parties must abide. That agreement set forth that defendant was to hold the land in suit for 1278 Fasli, at the rent specified, but that he was not to hold beyond 1278 Fasli without taking a fresh lease.

At the end of 1278 Fasli, defendant's tenancy ceased and it was not necessary for him to give notice of relinquishment under section 21.

No. 7.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

NAWAR SAADAT HUSAIN KHAN AND TEGH BAHADUR
(PLAINTIFFS), APPELLANTS, *v.* **HALBAL** (DEFENDANT), RESPONDENT.

Printed forms of lease—Landlords bound by entire contents.

Held, that landlords making use of printed forms of lease are bound by the entire contents of that form and not by such portions only as may be filled in writing to render the form intelligible.

Nos. 7 & 81871.1871
30th Nov.

This is a suit under clause 2, section 83, Oudh Rent Act, for recovery of arrears of rent for a part of 1279 Fasli. The defendant pleads non-liability, his tenancy having ceased at the end of 1278 Fasli. The Court of first instance held that as defendant had not given a notice of relinquishment under section 21, he was liable for the rent of 1279 Fasli, under the term of section 35. The Lower Appellate Court held that as defendant took a lease in writing for 1278 Fasli, section 21 did not apply under section 4, and that defendant was not bound to give a notice of relinquishment, and as he had not cultivated in 1279 Fasli, he was not liable for rent. In appeal it is urged that the Lower Court's finding is inconsistent with the provisions of the Rent Act, because until a cultivator gives notice of relinquishment he is liable to pay rent, that the lease given to defendant for 1278 Fasli was printed, and that plaintiff is not bound by the printed portion of the lease but only by what is written. I have in my Judgment of this day's date in the case of *Raja Saiyid Nawab Ali Khan*, plaintiff-appellant, versus *Sheo Prasad*, defendant-respondent, disposed of the first plea and have ruled that section 21 does not apply to tenants holding under written agreements. The second plea is not good. If the appellant chooses to make use of a printed form of lease he must abide by that form, he cannot be allowed to restrict his liability to the few words that may be written in order to render the form intelligible.

No. 8.*

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

HAZARI SINGH (PLAINTIFF), APPELLANT, *v.* MEHARBAN SINGH
(DEFENDANT), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 83, cl. 8—Issue of second notice—First cancelled.

When a landlord issues a notice of ejectment and the tenant institutes a suit to contest such notice, and notice is cancelled on the ground that

* Approved in *Mangal v. Jawahir*—R. A. R. 41 of 1884.

there exists some objection to the tenant's ejectment. *Held*, that it is not competent for the landlord to issue another notice in respect of the same land without taking measures to remove the objection.

No. 8**1871.**

This is a suit under section 83, clause 8, of the Rent Act, instituted by plaintiff to contest a notice of ejectment issued by defendant. The pleas raised by plaintiff involve several questions which have not in my opinion received due consideration. In the first place it appears that this village was formerly in the possession of Chaudhari Hashmat Ali, who according to the Tahsildar allowed the ex-proprietors *str.* The Chaudhari sold the village to Gopal Singh of whom the defendant purchased it. The Tahsildar states that plaintiff has no claim on defendant under the above circumstances. It is, however, clear that plaintiff's rights if he had any, could not be prejudiced by the transfer of the over-proprietary right. It may be held then to be doubtful whether plaintiff is a tenant, and according to Rent Act Ruling No. 2, the notice of ejectment should be cancelled. Again, if the plaintiff is not an under-proprietor, there can be but little doubt that he can substantiate a right of occupancy, but this issue has not been properly tried out. Thirdly, the Lower Courts have found that plaintiff is entitled to compensation for improvements, they should then, as I have ruled in Rent Act Ruling No. 5, have cancelled the notice of ejectment and left the parties to come to terms or apply for the assistance of the Courts under section 25. But I deem it necessary to cancel the notice on the following ground, *viz.*, that in the preceding year defendant issued a notice of ejectment on plaintiff, in respect of this land, and plaintiff having instituted a suit to contest the notice, it was held that plaintiff was entitled to compensation and the notice was cancelled. This being so, the defendant has no right to issue another notice of ejectment on plaintiff, until he has taken measures to remove the objection found by a Court of competent jurisdiction to exist against the plaintiff's ejectment. The defendant is raising again the same issue that was given against him last year and thus unnecessarily occupying the time of the Courts.

1871**8th Dec.**

No. 9**1871.****No. 9.***Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.*

SITAL PRASAD, CONTRACTOR (PLAINTIFF), APPELLANT, *v.* NAND
RAM, CULTIVATOR (DEFENDANT), RESPONDENT.

*Oudh Rent Act (XIX of 1868), s. 83, cl. 2—Proprietor's right extinguished
by decree of Court—Right of occupancy—Determination of rent.*

Held, that when a proprietor's right in land is extinguished by a decree of Court such proprietor may for the purposes of a suit under clause 2, section 83 Rent Act, and pending the determination of his status by a Court of competent jurisdiction, be deemed to be a tenant with a right of occupancy in the land held by him in cultivating occupancy.

Held, further, that the Rent Courts are competent to determine the amount of rent payable by such tenant.

This case is a peculiar one. I postponed it for a fortnight to enable the plaintiff-appellant's pleader to appear, as I should have been glad to have heard the points in the case argued. To-day, however, no one put in an appearance on appellant's behalf and were the case an ordinary one, I should dismiss the appeal in default; but as it is a peculiar case and I have already, with considerable hesitation, decided a somewhat similar one, and am of opinion that my decision was wrong, I deem it advisable to discuss this case at length, especially as it appears likely that other similar cases may arise in the Bahraich District. The defendants were admitted to the settlement of this village at the summary settlement, and have held the village as proprietors up to within a recent date. The Settlement Courts have decided, that defendants have failed to substantiate a good proprietary title, and have decreed the village to Government. The Deputy Commissioner has on behalf of Government, leased the village to plaintiff, who sues to recover from defendants the rent payable on account of the lands held by them in cultivating occupancy at rates similar to those payable by other tenants. The plea urged is that defendants have never paid rent, and that consequently the plaintiff cannot in the absence of a written agreement compel them to pay any. Both the Lower Courts have admitted the plea as good under section 36 of the Rent Act. In a recent case somewhat

similar to this I upheld this decision, but there is this difference that in the former case there was nothing on the record to show distinctly that the defendants were not tenants. In the present case the Deputy Commissioner directly asserts that defendants are not tenants; this being so, section 36 does not apply. Even if they are tenants having a right of occupancy the section does not apply. What then is the position of the defendants and is there anything in the Rent Act, which authorises a Deputy Collector, or Collector, to determine the rate of rent payable by a person in the position of defendants? As to the position of defendants it must be admitted that at present they are not under-proprietors, for they can produce no decree of a Court of competent jurisdiction, affirming them to be under-proprietors. I think however that for the purposes of this suit and pending the determination of defendant's status by a Court of competent jurisdiction, they must be held to be tenants having a right of occupancy in the lands they actually cultivate. In support of this view I would refer to the ruling of the Sadder Dewani Adalat, North-Western Provinces, in the case of *Ram Narain Singh*, versus *Kalehsur Pathak*, August 10th 1861, where it was held, that an ex-proprietor whose rights have been extinguished by auction sale for decree of Court, holds no better position than a ryot with a right of occupancy under section 5 Act X of 1859. It is true that rights of occupancy in Oudh rest on a different basis to similar rights in the North-Western Provinces. Still the case of defendants is analogous to that of the ex-proprietors in the case quoted, and they appear to me to fulfil the conditions required by section 5 Oudh Rent Act, to establish a right of occupancy. Their rights as proprietors have been extinguished by a decree of Court; they may for the purposes of this suit be presumed to have been in proprietary possession within thirty years next before the 13th February 1856, or they would not have been admitted to engage as proprietors in 1858-59. There can be little doubt about their having cultivated the land in suit on 24th August 1866, and it is not alleged that this land came into their occupation for the first time since 13th February 1856. The defendants may then justly I think for

Nos. 9 & 10
1871.

the purposes of this suit be held to be tenants having rights of occupancy. Are the Rent Courts then competent to determine the rents payable by defendants? Section 8 sets forth that tenants having a right of occupancy are entitled to leases at rates of rent determined in accordance with the provisions contained in sections 32, 33 and 34. These sections refer rather to enhancement of rent, than the determination of the rent hitherto paid. But I take it to be in accordance with the spirit of the Act that in a suit for the recovery of arrears of rent the Court should, when the rate or amount of rent demandable is disputed, decide the amount for which the defendant is liable. I am of opinion then that it is competent for the Rent Court to determine the amount of rent payable by defendants. Under section 32 defendants are not liable to an enhancement of the rent usually paid in the absence of a decree under the Act. What the defendants have hitherto paid has been revenue, but by the change of their position such payments now become rent and it is clear that defendants have no claim to hold the land free of all demand. Before me they admit their willingness to pay whatever the Court thinks reasonable, but for the reasons above recorded, I am of opinion that they cannot be held liable to pay more than the Government Revenue apportionable to the lands in their occupation. As I cannot decide on the record what is the actual amount payable by defendants under this ruling I am compelled to remand the case for the determination of the following issues: 1st, the amount of land held in cultivating occupancy by the defendants in 1278 Fasli and 2nd, the amount of Government Revenue apportionable on such land.

No. 10.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

THAKUR PRASAD (PLAINTIFF), APPELLANT, *v.* BABU AJIT SINGH
(DEFENDANT), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 83, cl. 8—Agreement conferring title in perpetuity—Lease for a term of years—Jurisdiction of Rent Court to enquire into genuineness of.

Held, in continuation of Rent Act Ruling 2, that when an agreement purporting to confer a title in perpetuity is pleaded in a suit under section

83, clause 8, the Court on being satisfied that there is *prima facie* reason to believe the agreement genuine should cancel the notice of ejectment and leave the title to be adjudicated in a Civil Court.

No. 10

1871.

Held, also, that Rent Courts are competent to enquire into and determine the genuineness and validity of leases for a term of years.

This suit is brought by plaintiff to contest a notice of ejectment issued by defendant on the ground that plaintiff holds under a written agreement and that he is entitled to compensation for certain improvements. Defendant denies the genuineness and validity of the agreement produced by plaintiff. The issues were not correctly framed in the Court of first instance. The main issue is whether plaintiff is a tenant holding under a written agreement. If this issue be given against plaintiff then the issue arises whether plaintiff is entitled to compensation.

1871
23rd Dec.

The plaintiff produces an agreement which purports to confer on him a title in perpetuity, and if there is *prima facie* reason to believe that this agreement is genuine the notice of ejectment should be cancelled. It has already been held in Rent Act Ruling No. 2 that Rent Courts are not empowered to determine titles in land other than rights of occupancy. They are empowered to determine rights of occupancy, as these rights rest entirely on the provisions of the Act. So also if a lease or agreement of a temporary nature is urged under section 37, the Rent Courts can enquire into and determine the genuineness and validity of such temporary lease. But in all other cases in which a permanent title is set up, the Rent Courts must leave such title to be adjudicated by a Civil Court. It was not the intention of the legislature in enacting the provisions regarding notices of ejectment to place in the hands of the landlords a power, whereby they could force all cultivators presumably holding a status above that of a tenant-at-will, but unprotected by a decree of Court, to substantiate their title in Court. In the present case the court of first instance has held the agreement produced by plaintiff to be invalid on the grounds that perpetual leases for cultivation are illegal, and that it is possible the plaintiff obtained the agreement while in the service of the lessor by fraud. The validity

Nos. 10 & 11
1871.

of the agreement purporting as it does to confer a title in perpetuity was beyond the jurisdiction of the Court. The genuineness of the document is declared to be doubtful, but Hardat Singh, the alleged lessor, declares that the signature on the document very much resembles his own. This being so, there is *prima facie* reason to believe the document is genuine, and the notice of ejectment must be cancelled.

No. 11.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

GYADIN SINGH AND LALTA SINGH (PLAINTIFFS), APPELLANTS, v.
 AJUDHIA SINGH (DEFENDANT), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 21—Notice of relinquishment.

Held, that there is nothing in section 21 of the Rent Act which requires a notice of relinquishment to be given in writing in the first instance. *Held*, further, that when a tenant holds under a lease for one year his tenancy ceases at the end of the year and the landlord can re-enter on possession.

1871
23rd Dec.

In this case the plaintiffs sue to recover rent from defendant at the rate of Rs. 32-8-0. Defendant urges that he is liable for Rs. 22-8-0 only. The Tahsildar made a very careful enquiry and found that in 1877 Fasli, defendant held a lease for Rs. 22-8-0, but that he refused to cultivate in 1278 Fasli, and that the land was made over to other cultivators at the rent of Rs. 32-8-0 when defendant forcibly resumed possession. The Tahsildar held defendant liable under these circumstances for the rent of Rs. 32-8-0. The Deputy Commissioner reversed this decision on the ground that there is no documentary evidence to show that the defendant ever gave up his field. There is nothing in section 21 of the Rent Act which requires a notice of relinquishment to be given in writing in the first instance. A written notice is requisite only when a verbal notice has been refused. In the present instance the relinquishment of the land by defendant may be presumed from the assignment of the land to another tenant. Moreover the defendant has failed to show that his lease was

for more than one year. The lease filed is for one year only, so that at the termination of the year defendant's tenancy ceased, and it was competent for the plaintiff to make over the land to another tenant.

Nos. 11 & 12
1871-72.

No. 12.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

NAND LALL, ZEMINDAR (PLAINTIFF), APPELLANT, v. NABI BAKHSH KHAN (DEFENDANT), RESPONDENT.

Suit to contest notice of ejectment—Effect of dismissal of—Oudh Rent Act (XIX of 1868), s. 38.

Concluding para. of case II, para. 9, Financial Commissioner's Circular No. 30 of 22nd March 1870 cancelled and *held*, that where a tenant brings a suit to contest a notice of ejectment and such suit is given against him, the order simply affirms plaintiff's grounds for claiming non-liability to ejectment invalid and if such order be passed subsequent to 15th June of one year, plaintiff is liable to be ejected by his landlord on 1st April of the ensuing year without issue of a second notice of ejectment.

It appears that last year defendant issued a notice of ejectment in respect of the very fields forming the subject of this suit. An enquiry was made and the plaintiff's right of occupancy in respect of No. 637 was affirmed, but the plaintiff's objection in regard to Nos. 254 and 568 was disallowed. The result of this order was then to declare that plaintiff had not made good his title to exemption from liability to ejectment in respect of Nos. 254 and 568, but as this order was not passed till after 15th June, plaintiff could not under section 38 of the Rent Act, be ejected till the 1st April following. I am of opinion however that the plaintiff was liable to ejectment from Nos. 254 and 568, on 1st April 1871, without issue of a second notice of ejectment on the part of defendant; the question of plaintiff's liability or non-liability to ejectment having been adjudicated by a court of competent jurisdiction should not have been re-admitted. The order was not a decree of ejectment in favor of the landlord as stated in Financial Commissioner's Circular 30-2361, page 21, of 22nd March 1870, but was an order disallowing and dismissing the plaintiff's objections to ejectment.

1872
15th Feby.

Nos. 12 & 13
1872.

A decree affirms that a plaintiff is entitled to the relief sought at the hands of the Court in whole or in part. The relief sought in the case under consideration was a declaratory order to the effect that plaintiff was not liable to ejectment from certain fields for certain reasons. The Court declined to grant the relief. How then can this be construed into a decree of ejectment passed against plaintiff in favor of defendant? The defendant was not applying to the Court for assistance to eject plaintiff, and consequently the Court had no jurisdiction to interfere in his behalf. I deem it necessary to explain this as the last paragraph of case II, given in para. 9, Financial Commissioner's Circular No. 30, of 22nd March 1870, rules differently, and that paragraph may be considered cancelled by the present decision.

No. 13.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

LOTAI (DEFENDANT), APPELLANT, *v.* NAWAB NISAR ALI KHAN
 (PLAINTIFF), RESPONDENT.

*Oudh Rent Act (XIX of 1868), ss. 35, 36—Admissibility of rent-roll
 (fard-lagan) to prove amount of rent.*

Held, that sections 35 and 36 of the Rent Act, must be read together and that the rent payable by the tenant in section 36, must refer to the rent payable by the tenant for the land in his occupation as stated in section 35. *Held*, further, that fard-lagan or rent-roll prepared under the orders of the Settlement Department, cannot be judicially recognized until it has been tested and approved by the Settlement Officer, nor until extracts have been given to and accepted by each of the tenants interested therein.

1872
14th March

Plaintiff sues to recover arrears of rent from defendant asserting that defendant holds 76 bigahs 9 biswas, kham, at a rent of Rs. 62-11-4, according to a fard-lagan or rent-roll prepared under the orders of the Settlement Department. Defendant pleads that he holds 104 bigahs 14 biswas, kham, at a rent of Rs. 63-1-3, of which he has paid Rs. 24 and deposited in Court Rs. 20 and urges that plaintiff has collected the rest from his defendant's sub-tenants. The issues were not correctly framed by the Court of first instance, but

that Court held that the entries in the fard-lagan having been attested by a Government Official were equivalent to pattahs and kabulyats and gave plaintiff a decree. The Court of first appeal recorded the evidence of the Patwari and referring to section 36, of the Rent Act held, that as no mention is made to any land in the section, but only to rent, and as the rent claimed for 1278 Fasli, is less than that paid by defendant in 1277 Fasli, this section did not apply. The decree in plaintiff's favor was therefore affirmed. The defendant appeals to this Court in respect of Rs. 21-5-4, the amount alleged to be claimed in excess of the rent due. Referring in the first place to the interpretation put by the Court of first appeal, on section 36, of the Rent Act, I must express my dissent from that interpretation. It is true that the word "land" is not in the section, which runs, that "if in any suit between a landlord and a tenant not having a right of occupancy, the amount of rent payable by such tenant shall be disputed," &c. But section 35 and 36, must I think be read together as they form a distinct part of Chapter IV of the Act, and the rent payable by the tenant in section 36 must be "the rent payable by the tenant for any land in his occupation" as in section 35. The question then is whether the land held by the defendant in 1278 Fasli, is less than that held in 1279 Fasli. The evidence of the Patwari taken by the Deputy Commissioner, proves that in 1276 and 1277 Fasli, defendant held 113 bigahs 4 biswas of land, and that in 1278 Fasli his holding was recorded in the fard-lagan at 76 bigahs 9 biswas. The bigahs in the fard-lagan are different to those current in the accounts in former years and according to the old measurements the defendant's holding in 1278 Fasli, would be 94 bigahs 4 biswas. It is clear then that defendant's holding in 1278 Fasli, is considerably less than his holding in 1277 Fasli. Is there then any evidence in writing as required by section 36 of the Rent Act, to satisfy the Court that the defendant agreed to pay in 1278 Fasli, Rs. 62-11-6 on 94 bigahs 4 biswas? I cannot accept the fard-lagan as evidence in writing of the fact of defendant's having agreed to pay the rent there entered. A

Nos. 13 & 14
1872.

document of this kind prepared under the order of a Settlement Officer, cannot be judicially recognized until it has been tested and approved by the Settlement Officers, nor until extracts from the entries in it have been given to and accepted by each of the tenants interested therein. But it is possible that Rs. 62-11-6, is about the proportion of rent due on 94 bigahs 4 biswas at the rate of Rs. 69-11-3, on 113 bigahs 4 biswas. Defendant pleaded in the Court of first instance that the plaintiff had collected certain sums from his sub-tenants. This plea of set-off is inadmissible under section 113 of the Rent Act. The only point then for determination is whether Rs. 62-11-6, represents the rents payable on account of 1278 Fasli, on 76 bigahs 6 biswas, at the rate paid for the same land by defendant in 1277 Fasli.

Appeal accepted, the orders of both Lower Courts reversed, and the cases remanded to the court of first instance through the Court of first appeal for decision with reference to the foregoing remarks. Costs of this appeal to be cost in the suit.

No. 14.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

HARPRASAD (PLAINTIFF), APPELLANT, v. BISHESHŪR TIWARI
(DEFENDANT), RESPONDENT.

Act XIX of 1868, ss. 106, 108—Limitation for recovery of rent in kind.

Held, that the term of limitation for suits for recovery of rent taken by division of the produce in kind or by estimate or appraisement of the standing crop is three months under section 108, and that the three years' limitation provided by section 106, applies only to suits for the recovery of arrears of rent payable in money.

1872
15th March.

The point for determination in the case is, what is the term of limitation applicable to suits for recovery of arrears of rent, where the rent is taken by division of the produce in kind. Both the Lower Courts have held that under sections 30 and 108 of the Rent Act, the term of three months applies, and have concurrently dismissed plaintiff's suits. In appeal to this Court it is contended that an arrear of rent is recoverable by

suit instituted within three years, whether the rent be payable in money or in kind. Undoubtedly section 106 declares that suits for the recovery of arrears of rent or revenue or of a share of profits shall, except in the case mentioned in section 16 be instituted within three years from the date on which the arrear or share of profit claimed shall have become due. The present case does not come within the provision of section 16 so further reference to that section is unnecessary. Plaintiff's contention is that under section 106, a suit for the recovery of arrears of rent can be instituted at any time within three years, whether the rent is payable in money or in kind. This contention is supported by the definition of rent as given in section 3, *viz.*, the money or the portion of the produce of the land payable on account of the use or occupation of land. In the absence of any further provision in the Act, the plaintiff's contention would be unassailable, but reading section 30 and 108 together with section 106, it seems evident that the intention of the Legislature was that the three years' term should apply to suits for the recovery of arrears of rent payable in money, and that three months should be the term of limitation for the recovery of arrears of rent payable in kind. Section 108 provides a term of limitation of three months for suits regarding distress, and regarding the division, estimate or appraisement of the produce of land. Now what are suits regarding the division, estimate or appraisement of the produce of land? They cannot be suits to set aside the award of an officer deputed on the application of either of the parties to effect a division, estimate, or appraisement, as section 31 directs that such suits shall be instituted within one month of the date of the award. Neither can the limitation prescribed by section 108 refer to the action to be taken under section 30 by either of the parties to enforce a division, estimate or appraisement. For though no limitation is provided by section 30, yet the action therein provided is by application, not by suit, whereas section 108 refers to suits. The only suits then that could have been contemplated by the Legislature in framing section 108, must have been suits for the recovery of rent taken by division of the produce in kind or by estimate or appraisement of the standing crop. Under

Nos. 14 & 15 this view of the law the decisions of the Lower Courts are correct,
1872. and this appeal must be dismissed.

No. 15.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

MADHO SING (PLAINTIFF), APPELLANT, v. LALTA PRASAD
 (DEFENDANT), RESPONDENT.

Determination by Court of rent not previously paid for land—Jurisdiction.

Held, that there is nothing in the Oudh Rent Act, empowering a Rent Court, to determine the rent payable by a tenant for land on which rent has not been previously paid.

1872
21st Nov.

The suit is laid to recover a certain sum as rent due on account of certain grove land. The defendant's right to the groves was determined by the Settlement Courts, but the right to the land seems to vest in plaintiff. The Lower Courts have not explained what conditions have been recorded in the village administration paper in regard to the right of the landlord over grove lands brought under cultivation. It would have been more satisfactory had this been done, but it seems clear that defendant has never paid any rent for the land since he brought it under cultivation, and consequently, the plaintiff's claim to recover rent is inadmissible under section 36 of the Rent Act. There is nothing in the Rent Act which empowers a Rent Court to determine the rent payable by a tenant on account of land on which rent has not been previously paid. This is a matter which must be adjusted by the parties themselves. If the owner of the grove land brings the land under cultivation without coming to an agreement with his landlord in regard to the rent, the landlord might have a cause of action for ejectment on account of a breach of the conditions of the tenure. Whatever remedy the landlord may have, it does not lie in a suit to recover arrears of rent in the absence of a written agreement to pay rent. The decision of the Lower Appellate Court must be upheld.

No. 16.

No. 16

1872.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

BABU UDRESH SINGH AND ANOTHER (PLAINTIFFS), APPELLANTS, v.
NIDHI SINGH (DEFENDANT), RESPONDENT.

Oudh Rent Act (XIX of 1868), ss. 12, 114—Arrears of rent are liable to interest.

Held, that arrears of Rent are liable to interest, absence of an express provision to this effect in Act XIX of 1868 notwithstanding; but it is for the Court in each case to determine whether under the circumstances of the case the liability should be enforced, and at what rate interest should be allowed.

The sole point for determination in this appeal is whether arrears of rent are liable to interest. Both the Lower Courts have held that they are not liable; the Court of first instance, because there is no express agreement between the parties for the payment of interest; and the Court of first appeal, because a special provision would have been made in the Oudh Rent Act, as has been done in section 20, Act X of 1859, had it been the intention of the Legislature to allow interest. In appeal to this Court, it is urged that the principle of section 20, Act X of 1859, should be followed, as section 114 of the Oudh Rent Act implies that arrears of rent are liable to interest. I am of opinion that arrears of rent are liable to interest, absence of an express provision to this effect in Act XIX of 1868 notwithstanding. Section 20, Act X of 1859 declares that arrears of rent shall, unless otherwise provided by written agreement, be liable to interest at 12 per cent. per annum. The corresponding section (12) of the Oudh Rent Act contains no such provision; but this section treats of arrears of revenue as well as of rent; while section 20, Act X of 1859, treats of rent only. The simple omission of the provision, even if intentional, scarcely warrants the conclusion that the intention of the Legislature was to enact the direct contrary of the omitted provision. Had this been intended, it is natural to suppose that a direct provision to this effect would have been inserted. The insertion in section 114 of a clause prohibiting the grant of interest on sums deposited in Courts in satisfaction of claims for money, naturally raises the inference that monies due, but not paid into Court, are liable

1872
26th Nov.

No. 16
1872.

to interest. Reading then section 12 with section 114, the conclusion at which I arrive is, that arrears of rent are liable to interest; but that it is for the Court in each case to determine whether under the circumstances of the case, the liability should be enforced, and if so, at what rate interest should be allowed. The Courts when allowing interest should further determine whether interest should be allowed from the date on which the arrears accrued, or simply from the date of the institution of the suit.

No. 17
1874.

No. 17.

Before Charles Currie, Esq., C. S., Officiating Judicial Commissioner, Oudh.

THAKUR JAWAHAR SINGH (DEFENDANT), APPELLANT, v.
THAKUR HARDEO BAKSH (PLAINTIFF), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 5—Right of occupancy—Estoppel.

Held, that plaintiff, having accepted land in satisfaction of his claims to subordinate rights in the estate of the defendant, became liable to pay rent for all other lands in his possession and is estopped from pleading a right of occupancy in such other lands.

1874
15th Jan'y.

I am of opinion that the Commissioner has taken an erroneous view of this case. The principles I have endeavoured to enforce in the disposal of suits to contest notices of ejectment are, first, that the suits are essentially summary suits; and secondly, that the Rent Courts, having no jurisdiction in respect of the determination of rights in land other than rights of occupancy as defined in section 5 of the Rent Act, should confine themselves to the determination of the simple issue, as to whether the plaintiff has made out a *prima facie* case that he is not a tenant. If he is a tenant, as a matter of course the provisions of the Rent Act in respect of tenants apply, and the Rent Courts have power to adjudicate on the plea that the tenant is a tenant with a right of occupancy, and on the other pleas mentioned in the Act in connection with notices of ejectment. My object in enforcing these principles has been to throw the onus of proof on the proper party, and not to allow a notice of ejectment to be made, as it were, an instrument of oppression, by which a landlord could force a subordinate holder

unprotected by a decree of Court to appear in Court as plaintiff. But the principle must be confined to its legitimate limits, and the subordinate holder must be held bound to make good a *prima facie* case under the ordinary rules of evidence. In the present instance, the plaintiff appears to me to have failed to substantiate even a *prima facie* case to the position he assumes. It appears that the plaintiff claims a share in the defendant's estate, and that he laid a claim to this share in the District Courts, but that his claim has been disallowed by both the Court of first instance and the Court of first appeal; and that an appeal is now pending before the Privy Council. It further appears that the plaintiff's claim to maintenance as a relative of defendant was brought before the British Indian Association, and an award passed; and as a fact the Assistant Commissioner states that "for the sake of convenience in lieu of the profits awarded by the British Indian Association, plaintiff was given possession of a portion of Basydih of equivalent value; and this estimated at Rs. 1,000 per annum, he at present enjoys, though under protest, for he has appealed the whole claim he brought in the District Court to the Privy Council." It would thus appear that, pending the determination of his claim to a share in the entire estate, the plaintiff has accepted a certain amount of land in the village of Basydih in satisfaction of his claims to subordinate interests. Notwithstanding this, he contests a notice of ejectment issued on him in respect of land, other than that in Basydih, on the ground that he is entitled to hold the land as a proprietor or, if not as a proprietor at any rate as a tenant with a right of occupancy. The Commissioner, Colonel Perkins, holding the award of the British Indian Association invalid, remanded the case for enquiry, as to whether plaintiff was a tenant within the meaning of the Rent Act. In this I think he was mistaken; for the plaintiff having accepted a certain status (even under protest) should be bound by such acceptance, and consequently the validity or invalidity of the award of the British Indian Association was foreign to the case; and, in addition to this, the Rent Courts have no jurisdiction to determine the validity or invalidity of such awards. Then the present Commissioner, Colonel MacAndrew, finds that plaintiff

Nos. 17 & 18
1874.

is not a tenant because he has not paid rent. The definition of tenant in the Rent Act is "any person not being an under-proprietor who is *liable* to pay rent." If the actual payment of rent was to be made the test of tenancy, I fear landlords would have a bad time of it. There can be no doubt that when the plaintiff accepted the land in Basydih in satisfaction of his claims to subordinate rights in the estate of the defendant, he became liable to pay rent, for all other lands then in his possession; and I am further of opinion, that by such acceptance he is estopped from pleading a right of occupancy in such other lands. I thus come to the conclusion that the notice of ejectment must be upheld.

No. 18.

Before Charles Currie, Esq., C. S., Judicial Commissioner, Oudh.

BODHI SINGH (DEFENDANT), APPELLANT, *v.* GOBARDHAN AND
 GOPINATH (PLAINTIFFS), RESPONDENTS.

Oudh Rent Act (XIX of 1868), s. 83 (4)—Grove-land—Ejectment of owner.

Held, that as long as there are trees standing in a grove, or at any rate a sufficient number of trees to maintain the character of a grove, the owner of the grove cannot be ejected from the land by a notice of ejectment. *But the landlord can sue for the ejectment of the tenant on the ground of his refusal to pay a reasonable rent.**

1874
 15th Jany.

This is a case which illustrates one of the practical difficulties of administering the Oudh Rent Act without inflicting hardship on landlords. The plaintiffs hold certain land occupied by groves, and it is admitted that they are entitled to the trees only, and not to the land. The defendant, the landlord, has issued a notice of ejectment on plaintiffs in respect of this land, on the ground that they are mere tenants and as such liable to ejectment. The plaintiffs sue to contest their liability to be ejected on the plea that as long as the trees remain, they cannot be ejected from the land. Thus arises the difficulty. Plaintiffs are clearly entitled to the trees only, they have no right to the land; and, in respect of the land, they are tenants,

* Words in italics cancelled by *Gaya v. Tribhuwan Dat*—(R. A. R. 48 of 1888).

for they are liable to pay rent. The plaintiffs admit this liability and urge that under a verbal agreement with a former landlord they have paid Rs. 7-14-0 ever since they cultivated the land. The defendant, the present landlord, thinks that Rs. 7-14-0 is not a reasonable rent, and he sued to recover Rs. 20-11-0; but failed, as section 36 Rent Act was a bar to his suit. He now tries to gain his object by issuing a notice of ejectment, but I am of opinion that his suit cannot in this shape be maintained. I have already ruled that as long as there are trees standing in a grove or at any rate a sufficient number of trees to maintain the character of a grove, the owner of a grove cannot be ejected from the land by a notice of ejectment. I do not see my way to any other ruling, although I admit that it may occasionally inflict hardship on landlords. But, then, it appears to me that the landlords have a remedy; they can sue under section 83, clause 4 for the ejectment of a tenant, and they can urge as the ground for such ejectment the tenant's refusal to pay a reasonable rent. Although the Courts are precluded by section 35 Rent Act from enquiring into the propriety of the rate of rent payable by a tenant not having a right of occupancy, they are not precluded from enquiring whether the action taken by the landlord in demanding the rent set forth in the proceedings is so far reasonable as to warrant their enforcing the tenant's liability to ejectment.

No. 19.

Before Charles Currie, Esq., C. S., Judicial Commissioner, Oudh.

**MUSAMMAT BIBI RASUL BAKSHI (DEFENDANT), APPELLANT v.
KHURSHAID HUSSAIN AND OTHERS (PLAINTIFFS), RESPONDENTS.**

Oudh Local Rates Act (XVII of 1871)—Cesses.

Cesses in Oudh are of two kinds *viz*: ordinary cesses, and cesses leviable under the Oudh Local Rates Act (XVII of 1871.)

As regards the latter, landlords can recover from under-proprietors the proportion of the cess leviable from them under section 6 of the Act.

As to the former, cesses in Oudh are under the orders of Government included in the Government demand. The term "Government demand"

No. 191874.

in a judgment decree or proceedings of a Settlement Court, *held*, in the absence of a distinct provision to the contrary, to mean the Government demand calculated at $51\frac{1}{4}$ per cent. of the average gross rental.

1874

23rd Jany.

The points for determination in this appeal are first—are plaintiffs, respondents, entitled to claim arrears of dues from 1274 F. to 1279F. or should their claim be limited to three years from the date on which the sum claimed became due; and, secondly—are plaintiffs entitled to a decree for cesses in addition to the rent fixed by the Settlement Court? It appears that defendant is one of several under-proprietors in whose favor a certain amount of land has been decreed by the Settlement Courts as an under-proprietary tenure. The Settlement Court's decree declared the defendant entitled to hold the land decreed on payment of the Government demand plus ten per cent. hak lambardari.

There appears to have been considerable delay in the apportionment of the rent payable by defendant; but eventually in 1870 it was declared to be Rs. 17 plus ten per cent. hak lambardari. Plaintiffs sue for the recovery of rent at this rate from 1274F.; the date from which they as proprietors have been called upon to pay the revised Government demand, and they claim certain additional sums on account of cesses. In regard to the claim for the period beyond the three years from which the sum claimed fell due, I am of opinion that plaintiffs' suit is barred by section 106, Rent Act. The rent payable by defendant was determined in 1870, or 1277F. It was open then to the plaintiffs to have instituted a suit at once for any arrears of rent due for the three years antecedent to 1277F. They did not institute a suit till 1873 or 1280F., and they must take the consequences of their failure to assert their rights. So much of the decree for Rs. 94-13-0 given in their favor, as relates to the years 1274-75 and 76, must be expunged. Then as to cesses; these are of two kinds, one what may be termed the ordinary cesses, and the other cesses leviable under the Oudh Local Rates Act (XVII of 1871). In regard to the latter, the decision must be guided by section 6 of the Act which empowers a landlord to recover from an under-proprietor a share

of the rate, bearing the same proportion to the whole rate that the share of the under-proprietor in the annual value of the land on which the rate is charged bears to half the annual value of such land. Annual value, under the definition given in section 2 of the Act, means in this case double the amount of the land revenue assessed on the village of Kuntoor. There remains only the question of what I have termed ordinary cesses. It appears that the instructions contained in paras. 14 and 15 of Circular No. 14 of 1861, have been entirely overlooked by the District Courts. In para. 14 of the Circular quoted, instructions were issued to the effect that all cesses were to be included in the Government demand; and in para. 15 the proportion that the Government demand was to bear to the average gross rental was fixed at $51\frac{1}{2}$ per cent. Wherever then the term "Government demand" is used in a judgment, decree or proceedings of a Settlement Court, it must in the absence of a distinct provision to the contrary, be held to mean the Government demand calculated at $51\frac{1}{2}$ per cent. of the average gross rental. If the Settlement Courts have lost sight of the instructions issued for their guidance, it is for them to rectify their errors, the Rent Courts cannot rectify them. The Settlement Courts then having determined that the rent payable by defendants in respect of the land, decreed as her under proprietary tenure, is on the basis of the Government demand, Rs. 17, the plaintiff is not entitled to claim from the defendant more than Rs. 17, as this sum must be held to represent the Government demand calculated at $51\frac{1}{2}$ per cent. of the average gross rental. The plaintiff's claim, then, for ordinary cesses must be disallowed.

No. 20.

Before Charles Currie, Esq., C. S., Judicial Commissioner, Oudh.

SHAH MAHOMED GANI ATA, MINOR, UNDER THE GUARDIANSHIP OF.
MUSAMMAT BATUL-U-NISSA (PLAINTIFF), APPELLANT, v. MUNA-
WAR KHAN (DEFENDANT), RESPONDENT.

*Oudh Rent Act (XIX of 1868), s. 25—Compensation for improvements—
Indirect assistance by landlord.*

In a case of compensation for tenant's improvements, to enable the Court to take into account the indirect assistance given by the landlord,

No. 201874.

it is necessary for the landlord, to prove either that at the time of making over the land, the tenant was allowed to take the land on a favorable rent on the express understanding that the tenant was to make improvements; or that subsequently to the making thereof, the landlord refrained from exacting the full rent.

187412th March.

This is an application under section 25, Oudh Rent Act, for the determination of the amount of compensation due to defendant for improvements. Defendant claims compensation for two wells, a tank, and an embankment. Assuming the tank to be a work for the storage of water and the embankment either a work for the storage of water or for protection against floods, within the meaning of the first explanation under section 23, Oudh Rent Act, it is necessary to determine whether these are works by which the annual letting value of the land has been, and at the present time continues to be increased. The evidence shews that when the water in another tank, known as Ganesh's tank, overflows, it makes its way into the tank constructed by the defendant and becomes available for agricultural purposes, and an irrigation lift has been constructed to allow of the water being thus utilized. There is no proof that the letting value of any land has been increased by this work. The supply of water must be too uncertain and precarious to admit of the use of the water being taken into consideration in the determination of the rent of the land in its vicinity. I am of opinion that compensation for this tank has been properly disallowed. So also, as regards the embankment, there is no proof that the letting value of any land has been increased by its construction, and compensation for this also has been properly disallowed. Of the two wells, it is clear that one is used for drinking purposes only, and consequently this is not a proper subject for compensation under the Act. There remains one well which is described as admitting of the working of eight "purs" or leather buckets. This well is used for purposes of irrigation and has been constructed within the last thirty years. The defendant is clearly entitled to compensation for this well, and I see no reason to doubt the correctness of the assessment of its value, *viz.*, Rs. 550. The question now for determination is whether the landlord, plaintiff, has given any

assistance within the meaning of section 25. Plaintiff asserts, and two officers have found, that assistance has been given indirectly, by the plaintiff's having allowed the defendant to hold at a rate of rent more favourable than the rate at which he would otherwise have held. This finding has not been approved by the Commissioner, who writes—"Mr. Williams holds that as 17 years ago defendant paid Rs. 101 on his chuck of 38 bigahs 13 biswas and his rent had not since been raised, the conclusion is that he has received indirect assistance from his landlord. This conclusion is based on the fact that rents have lately risen all over the province * * * Mr. Blennerhasset now finds that as the improvements were made 18 years ago, and the rent of the land has increased by reason of these improvements, and as the defendant has enjoyed the whole of the benefit, he is entitled to no compensation." The Commissioner then proceeds to express his own opinion, and holds "that if a landlord wants a fine pucca well in which eight "purs" are worked, he should pay a substantial though a reasonable sum." He does not concur that the bare fact of the landlord having abstained from enhancing the rent at every opportunity, amount to indirect assistance," and holds that "to prove this assistance, he should establish that, while he raised the rents on adjacent fields, he forebore the like measure with regard to defendant's improvements."

I concur with the Commissioner. I am of opinion that to enable the Court to take into account the assistance given by the landlord, it is necessary for the landlord to prove (1) either that, at the time of making over the land, the tenant was allowed to take the land at a rent more favorable than the rent then obtainable for the land on the express understanding that the tenant was to make improvements; (2) or that, subsequently to the making of the improvements, the landlord refrained from exacting the rent which he would have exacted, but for the improvements made by the tenant. In the present instance the landlord has done neither the one or the other. The Assistant Commissioner writes, that it is shewn that the defendant got the fields at the same rent that the persons who previously

Nos. 20 & 21
1874.

held them had paid, and the plaintiff has not proved that while he raised the rents on adjacent fields, he forebore to raise the defendant's rent in consideration of the improvements he had made. There is in my opinion no proof of indirect assistance in the present case, and I therefore uphold the order of the Lower Appellate Court.

No. 21.*

Before Charles Currie, Esq., C. S., Judicial Commissioner, Oudh.

GANESHI (DEFENDANT), APPELLANT, v. LALU (PLAINTIFF), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 106—Share of Profits when due—Limitation.

A share of profits does not become due until the close of the Fasli year, unless it can be established that a rendition of accounts took place before the end of the year.

The pleas raised in this appeal are that the claim for profits for 1277 Fasli is barred by limitation, and that the amount of uncollected assets has been miscalculated. I agree with the Deputy Commissioner that the claim for profits of 1277 Fasli is not barred. Section 106, Rent Act, provides that suits for the recovery of a share of profits shall be instituted within three years from the date on which the share of profit claimed shall have become due. In my opinion a share of profits does not become due until the close of the Fasli year, unless it can be established that a rendition of accounts took place before the end of the year. If rendition of accounts for a Fasli year takes place before the end of that year, then a share of profits under the rendition becomes due from the date of the rendition. In the present case there is no proof that there was a rendition of accounts and consequently the share became due at the end of the Fasli year. The second plea is invalid and requires no refutation.

* Differed from in *Ashraf Khan v. Amir Khan*—(R. A. R. 45 of 1886).

Approved in *Musammat Mahesha v. Kampta Pershad*—(R. A. R. 70 of 1893).

No. 22.***Nos. 22 & 23****1874.***Before Charles Currie, Esq., C. S., Judicial Commissioner, Oudh.***MOBARAK ALI (APPELLANT) v. RAJA AMIR HASAN KHAN
(RESPONDENT).**

Held, that when a Settlement Court has fixed the rent payable by an under-proprietor, a Rent Court cannot alter such decree, but that the rent so decreed must be held to include everything which the under-proprietor should pay except local rates.

The only point for determination in this case is whether, when a Settlement Court has fixed the rent payable by an under-proprietor, the landlord can demand and the Rent Courts enforce payment of something extra on account of patwari's wages. The two Lower Courts have held that this can be done. I am decidedly of opinion that it cannot. The Rent Courts cannot look beyond the decree given by the Settlement Courts, and can in no way modify that decree. The rent fixed by the Settlement Court must be taken to include everything which the under-proprietor is liable to with the exception of local rates, the liability for which is created by a special Act.

**1874
17th Dec.****No. 23.†***Before Charles Currie, Esq., C. S., Judicial Commissioner, Oudh.***SARDAR SING (JUDGMENT-DEBTOR), APPELLANT, v. UMRAO SING
(DECREE-HOLDER), RESPONDENT.***Oudh Rent Act (XIX of 1868), s. 118.*

Section 118 of the Rent Act interpreted.

I agree with the Deputy Commissioner as to the correct interpretation to be placed on section 118, Oudh Rent Act. There is nothing in this section which provides that a process of execution pending in a Court shall cease and determine on the expiry of three years from date of decree. It provides only that no fresh process shall issue after the lapse of three years from date of decree.

* Superseded by Rent Appeal (unreported) No. 3 of 1892 ; see R. A. R. 73 (*Amjad Ali Khan v. Abdul Rahman Khan*).

† Affirmed by R. A. R. 24.

No. 24

1874.

No. 24.

*Before Charles Currie, Esq., C. S., Judicial Commissioner, Oudh.*ENCUMBERED ESTATE OF KAIMAHRA (DECREE-HOLDER), v.
KALKA AND OTHERS (JUDGMENT-DEBTORS).*Oudh Rent Act (XIX of 1868), s. 118—Execution of decrees—"Fresh process."*

Affirms Rent Act Ruling 23, viz., that there is nothing in section 118 of Act XIX of 1868 providing that a process of execution on pending in a court shall cease and determine on the expiry of three years from date of decree.

Semble.—*In a suit against a lessee for arrears of rent the lessee's surety is also liable to be impleaded.**

This case was referred to me for orders by the Commissioner, Sitapur, under his No. 486, dated 12th February 1875. As the Oudh Rent Act contains no provision for a reference similar to that in section 18, Act XXXII of 1871, I preferred to take up the case under the power of revision vested in my court by section 109 Oudh Rent Act and Schedule D thereto annexed. The facts are clearly enough set forth in the Deputy Commissioner's letter No. 221, dated 4th February 1875, as follows:—More than three years ago the estate of Kaimahra obtained a decree in the Rent Court against three joint lessees and their surety. Having got this decree, the talukdar and his successor, the Superintendent encumbered estates, lost no time or opportunity to execute it, attachment of personal and real property, imprisonment, attachment of profits of landed property were all tried, but the decree still remained unsatisfied on 8th July 1874, three years after it was passed, and then by section 118, Oudh Rent Act, the Assistant Commissioner charged with the execution of the decree held that further process became distinctly and absolutely barred. On turning to the proceedings, I find that on 5th April 1874, the decree-holder filed an application for execution of his decree by the attachment and sale of certain landed property belonging to one of the persons against whom his decree had been passed. The Assistant Commissioner, on 16th November 1874, writes:—"There has been no laches on the part of the decree-holder, and his failure to satisfy his claim is ascribable in great part to delays presumably unavoidable which have arisen in the courts executing the decree." He then refers to section 118 Rent

*Cancelled by *In re Raja Amir Hasan Khan*—(R. A. R. 50 of 1888).

Act, and proceeds "on 8th July 1874, that is, after the lapse of three years, the execution had so far progressed, that a statement for the sale of the judgment-debtor's immoveable property had been prepared. The question then arose whether any further steps in execution of the decree could be taken," and the Assistant Commissioner then explains his reasons for considering that the issue of proclamation, and the sale itself, after the usual sanction had been obtained, would be process of execution within the meaning of section 118 Rent Act. I have already ruled (see Rent Act Ruling 23) that there is nothing in section 118, Oudh Rent Act, which provides that a process of execution pending in a court shall cease and determine on the expiry of three years from date of decree. To this ruling I adhere, and by it the present case must be governed; and seeing that the decree-holder had put the court in motion in April 1874, before the term of three years expired, the process of execution pending at the expiration of the three years cannot be held to have ceased and determined, but must be carried through in due course. This disposes of the main question raised in this case but another question has been incidentally raised by the Deputy Commissioner, who seems to think that the decree, as against a surety, cannot be executed, because the Rent Courts have no jurisdiction to pass a decree against a surety. On this point I prefer to follow the decision of the North-Western Provinces' Court in the case of *Gholam Hosein v. Sah Kundan Lal*, to the effect that in a suit against a lessee for arrears of rent the lessor's surety is also liable to be impleaded.

Nos. 24 & 25
1874-75.

No. 25.*

Before Charles Currie, Esq., C. S., Judicial Commissioner, Oudh.

INDARJIT (PLAINTIFF), APPELLANT, *v.* DALLAI, KURMI
(DEFENDANT), RESPONDENT.

*Oudh Rent Act (XIX of 1868), ss. 40, 83 (4)—Suit for ejectment of a tenant—
Grounds for.*

It is not correct to say that the only suits for ejectment known to the Rent Act are under section 40. That section contains one of several

*Approved in *Raja Madho Singh v. Binda*—R. A. R. 38 of 1883.

Cancelled by *Gaya v. Bhaya Tribhuvan Dat*—R. A. R. 48 of 1888.

No. 251875.

"general provisions" regarding ejectment. All suits for the ejectment of a tenant, on whatever ground sought, fall under clause 4 of section 83, and are cognizable only by the Rent Courts.

1875
4th March.

This suit is laid by plaintiff under section 83, clause 4, Oudh Rent Act, for the ejectment of defendant from certain land, possession of which was gained by defendant under a thirty years' lease granted by plaintiff. The allegation of plaintiff is that defendant voluntarily threw up the lease and returned the lease-bond, while defendant contends that he never threw up the lease, and that he sent the bond to plaintiff solely with the view of having the numbers of the plots covered by the lease inserted in it. The court of first instance gave plaintiff a decree, but the Commissioner, on appeal, reversed this decree holding (1) that defendant did not relinquish the land covered by the lease, but only returned the lease to plaintiff to have some entry made, about which he had then in good faith agreed; (2) that there was no need for the lease to be registered; and (3) that this suit did not lie under section 83, clause 4 of the Rent Act.

The reason assigned by the Commissioner for his finding on the third point is, that this suit is "certainly not a suit for "cancelling a lease on account of the non-payment of arrears "of rent, or on account of a breach of the conditions of such "lease, and the only *suit* for the ejectment of a tenant known "to the Rent Act is under section 40 of the Rent Act, though "application for aid may be made under section 45, but these "two sections premise an arrear of rent, or a notice by the land-lord under section 43, and neither of these conditions apply "to the present case, which should not have been entertained "by the Rent Court in its present form. A suit in the Civil "Court for possession of the land would have lain." I must express my entire dissent from the view of the law as thus stated by the Commissioner. Section 83 of the Oudh Rent Act declares that the Courts of Revenue in Oudh shall take cognizance of the following descriptions of suits, and that such suits shall be heard and determined in the said courts, *and not otherwise*. Clause 4 of this section specifies, as one of the

description of suits of which the Revenue Courts are to take cognizance, suits for the ejectment of a tenant. It is not therefore correct to say that the only suits of ejectment known to the Rent Act are under section 40 of the Act. That section contains one of several "general provisions" regarding ejectment, the substance of which is that a tenant from whom an arrear of rent remains due on the 15th May in any year may, subject to the provisions of section 38 and 41, be ejected from the land in respect of which the arrear is due. Section 38 refers to the time at which a tenant may be ejected, and Section 41 refers to the ejectment of tenants having a right of occupancy. There is no provision, therefore, in section 40 for a suit for the ejectment of a tenant; all such suits fall under section 83, clause 4, and are cognizable only by the Rent Courts. In this case, as the defendant asserts the position of a tenant, the suit was properly laid and heard in the Rent Court, and no suit for the possession of the land would have lain in a Civil Court. In my judgment, promulgated as Rent Act Ruling 18, I held that landlords can sue for the ejectment of a tenant under section 83, clause 4, and that they can urge, as the ground for such ejectment, the tenant's refusal to pay a reasonable rent. I am aware that it might be contended that a suit for the ejectment of a tenant under section 83, clause 4 must be laid on account of the non-payment of arrears of rent; but I am of opinion that the wording of the clause covers all suits for the ejectment of a tenant, whatever may be the ground on which the ejectment is sought. Corresponding provision in Act X 1859, ran "all suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment, or a lease may be liable to be cancelled." I hold, then, that no objection can be taken to this suit on the ground that it was heard by a Rent Court under section 83, clause 4 Oudh Rent Act.

I agree with the Commissioner that, since the lease in favor of defendant was executed in 1870, there was no legal necessity for its registration; but on the remaining point I am constrained to differ from his conclusion, while I agree with him

No. 25**1875.**

in setting aside the oral evidence. The facts with which we have to deal are, that plaintiff holds a lease-bond granted by him some years ago in favor of defendant, and that defendant admits having sent back this bond to plaintiff. The question is, whether defendant sent back the bond as proof of his having relinquished the lease, or whether he sent it back to have certain matter inserted in it. On whom should the burden of proof be thrown? Clearly, in my opinion, on defendant; for if no evidence were given on either side, the plaintiff would succeed. Now what does defendant's evidence amount to? It is clear that on 24th September 1873, a dispute between the parties as to some outstanding money transactions between them was adjusted. Plaintiff paid defendant a considerable sum of money and relinquished his claim against defendant for arrears of rent due on account of some land not included in the lease. On that day defendant writes to plaintiff, recites that his account has been made up, his bonds returned, and then adds "the lease that you have asked for back I have returned and want a receipt for it." Defendant now says that if he had intended, in returning the lease-bond, to relinquish the lease, he should have asked not for a receipt but for his kabuliyat. This assumes that a kabuliyat was executed, but of this there is no proof whatever. It is reasonable to suppose that had a kabuliyat existed the plaintiff would have sent it with other papers to be delivered on the making up of accounts, and that mention of it would have been made by defendant in his letter. On 2nd December 1873, or more than two months after the return of the lease-bond, defendant again writes to plaintiff to this effect, "the lease in name of Moti Lall you had sent for inspection and insertion of numbers, and which was sent to you on 24th September, you have not yet returned; some time has elapsed, therefore I write to ask for return of that lease." In regard to this letter I would observe that defendant nowhere explains why he took no steps to get back his lease-bond for more than two months. On 10th February 1874, defendant again writes to plaintiff, but this letter defendant does not produce. Its contents can only be gathered from defendant's reply, and from this it would appear that plaintiff denied getting

back the lease-bond in order to fill in numbers. To my mind the presumption that defendant relinquished his lease and returned the lease-bond in proof of the fact when his accounts were settled on 24th September 1873, is in no way rebutted by the statements made by defendant in subsequent letters to plaintiff. I am of opinion, therefore, that the decree in plaintiff's favor passed by the Assistant Commissioner must be restored and affirmed.

Nos. 25 & 26
1875-76.

No. 26. *

Before Charles Currie, Esq., C. S., Judicial Commissioner, Oudh.

CHANDKA SINGH (DEFENDANT), APPELLANT, *v.* LAL CHATTARPAL SINGH (PLAINTIFF), RESPONDENT.

Oudh Rent Act (XIX of 1868), ss. 22, 25—Compensation for improvements.

Discusses the principles on which compensation for tenants' improvements should be determined.

This case has received but imperfect investigation at the hands of the district officers, and it is clear that they have not realised the importance of the points involved in the adjudication of claims of this nature. Plaintiff issued a notice of ejectment on defendant,* which was set aside on suit brought by the latter, on the ground that defendant had established *prima facie* claim to compensation for improvements. In consequence of this, plaintiff has filed the present application under section 25 Oudh Rent Act, asking that the amount of compensation due, if any, may be determined. The proceedings show that defendant claims compensation for eleven improvements, and the result of a local enquiry is to the effect that, for the improvements made within thirty years, the amount expended by defendant comes to Rs. 1,674. From this sum the Commissioner has according to the practice prevailing in the Rae Bareilly Division, made a deduction of one-thirtieth on account of each year that has elapsed since the improvement was made and thus reduced the compensation awarded to about one-half of the capital expended. I have already, in other cases of this

1876
18th May.

* Referred to in *Must. Badam Kunwar v. Bhukam Singh*—(R. A. R. 44 of 1885).

No. 28
1876.

kind, expressed my opinion that this is not the correct principle on which claims of this nature should be adjudicated. The present seems to be a case in which the principles on which compensation for tenants' improvements should be determined may properly be discussed. Section 22, Oudh Rent Act, provides that "if any tenant, or the person from whom he has inherited, "made any such improvements on the land in his occupation "as are hereinafter mentioned, the rent payable by him or his "representative, shall not be enhanced, nor shall he, or his "representative, be ejected from the same land unless and until "he, or his representative, as the case may be, has received "compensation for the outlay in money or labour or both "expended in making such improvements by him, or the person "from whom he has inherited, or whom he represents, within "thirty years next before the date of such enhancement or "ejectment." The main points in this section are,—(1) that the person claiming compensation is a tenant; (2) that the improvements have been made on the land in his occupation; (3) that compensation is to be given for the outlay, either in money or in labour, incurred in making the improvement; and (4) that the improvements have been made within thirty years. Section 23 defines the term "improvements" as meaning "works "by which the annual letting-value of the land has been, and, "at the time of demanding compensation, continues to be "increased." Here, then, we have another point for enquiry; (5) whether the letting-value of the land has been and continues to be increased. Lastly, in determining the amount of compensation, section 25 provides that certain matters are to be taken into consideration, which will be noticed presently.

Here, then, we find six material points for investigation:—

1st.—Is the person claiming compensation a tenant? *that is to say, not only is he a tenant at this present time, but was he, or the person, from whom he has inherited, a tenant at the time the improvement was made?* * In the case now before

* Expunged by R. A. R. No. 26.

me, the defendant is said to have been a zillahdar in the service of plaintiff for many years, and, as such, to have had the management of this and other villages. If the improvements made by the defendant were made during the period of his service as zillahdar, it is for defendant to prove that they were made by the outlay of his (defendant's) own capital, and not out of monies of which he must be considered to have been trustee on behalf of his employer.

2nd.—The improvements must have been made on the land in the occupation of the tenant. This must be held to mean that the improvements must be situated on land held by the claimant as an ordinary cultivating tenant, so that if the landlord compensates the tenants for the improvements, he will be able to acquire the full interest therein. In the present case, it would appear that the defendant holds some lands as *sir* and some as an ordinary cultivating tenant; but there is nothing to show whether any one of the improvements is situated on land held by the defendant as an ordinary cultivating tenant. If the improvement is situated on the defendant's *sir*, the presumption is that it was constructed for the benefit of the *sir*, and as the landlord could not acquire the full interest in the improvement, for the owner of the *sir* would not be likely to forego the benefit of the improvement in respect of his *sir*, the claim for compensation could not be maintained.

3rd.—Compensation is to be given for the outlay, either in money or in labour, incurred in making the improvement. The original cost of each improvement must be ascertained as accurately as it is possible to do so. This has been done in the present instance, and the estimate made by the tahsildar may be accepted.

4th.—The improvements must have been made within thirty years. This point is well known and never overlooked. The tahsildar has found that improvements.—Nos. 1, tank No. 368; 6, tank No. 501; and 7, embankment No. 358, were constructed more than thirty years ago. All sums expended

No. 26
1876.

in construction or repair of the other eight improvements within thirty years have been ascertained and allowed.

5th.—The letting-value of the land has been and continues to be increased, that is, the letting-value of the land held by the claimant as an ordinary cultivating tenant must have been and must at the time of enquiry continue to be increased. It is necessary, then, to ascertain what lands held by defendant as an ordinary cultivating tenant have benefited by each of the improvements, and whether they still continue to be benefited.

When these points have been determined, the total sum claimable as compensation will have been ascertained, and it will then be necessary to determine whether the plaintiff is entitled to any abatement under section 25. That section provides that there shall be taken into account "any assistance given by the landlord, either directly in money, material, or labour at the time of making such improvements, or indirectly by subsequently allowing the tenant to hold at a rate of rent more favourable than the rate at which he otherwise would have held." In estimating the direct assistance, the relations existing between the landlord and tenant should be taken into consideration. As in present case, whether the tenant once held the position of zillahdar, the assistance of the landlord might have been given in the support accorded to the servant in procuring labour at low rates, if not gratuitously. For the purpose of calculating the indirect assistance, endeavour must be made to ascertain the letting-value of the land before the improvement was made, and its letting-value consequent on the improvement. It must be shown how far the tenant has been allowed to benefit by the increased letting-value, and whether such benefit exceeds the ordinary interest on the capital expended. Here again, whether the tenant holds other lands besides those for which compensation is claimable, it becomes necessary to enquire whether the improvement has benefited these other lands, and, if so, whether the benefit these other lands have derived is sufficient to cover the ordinary interest on the capital expended on the improvements. Then again, it

must be borne in mind that if a landlord pays a tenant the full sum expended by that tenant on the construction of an improvement the landlord is entitled to the entire improvement, and if the tenant holds lands otherwise than as a tenant, such lands cannot derive any benefit from the improvements after they have been paid for by the landlord without the landlord's consent. If the tenant wishes to continue to enjoy the benefit of his improvements in respect of such lands, he must consent to a proportionate abatement in the amount of compensation.

Nos. 26 & 27
1876-77.

**To be kept with Rent Act Ruling No. 26, dated Lucknow
the 18th May, 1876.**

Before William C. Capper, Esq., C. S., Judicial Commissioner, Oudh.

From cases that have come to my notice it appears that the undermentioned passage on page 38 of Rent Act Ruling 26 of 1876 has been misunderstood. And it has been held that tenants who have retained as tenants possession of land in which their ancestors had proprietary or under-proprietary rights are not entitled to compensation for improvements effected by those ancestors before they lost all proprietary rights.

I know that the use of the word "person" in the beginning of section 22 was not accidental nor was it to be considered as the equivalent of "tenant." The following words will therefore be expunged from all copies of the ruling, "that is to say, not only is he tenant at this present time, but was he, or the person from whom he has inherited, a tenant at the time the improvement was made?"

No. 27.

Before Charles Currie, Esq., C. S., Judicial Commissioner, Oudh.

**THAKUR ARARU SINGH (DEFENDANT), APPELLANT, v. MAHABIR
BAKSH (PLAINTIFF), RESPONDENT.**

Oudh Rent Act (XIX of 1868), s. 104—Lambardari dues—Limitation.

Held, that term of limitation applicable to suits to recover lambardar's dues is one year.

Nos. 27 & 28**1877-78.****1877
18th May.**

The sole point for determination is, whether the term of limitation applicable to suits to recover lambardari dues, is one year under section 104, or three years under section 103, Oudh Rent Act. The general rule is that laid down by section 104, which runs that "except as herein otherwise provided * * * all suits under this Act shall be instituted within one year from the date of the accruing of the cause of action." It must therefore be shown that a suit for lambardari dues is provided for by the Act, otherwise than by section 104. Now suits for lambardari dues and for village expenses fall under section 83, clause 16 of the Act, as they are suits by "a lambardar for village expenses and other dues, for which co-sharers may be responsible to him." Section 106 refers (a) to suits for the recovery of arrears of rent or revenue *i. e.*, suits under section 83, clause 2, for arrears of rent; section 83, clause 16, suits by a lambardar or pattidar who is entitled to collect the rents of a patti for arrears of revenue or rent payable through him by the co-sharers whom he represents; and section 83 clause 18, suits by maafidars or assignees of revenue for arrears of revenue; and (b) to suits for the recovery of a share of profits, *i. e.*, to suits under section 83, clause 15, by a sharer against a lambardar or co-sharer for share of the profits of an estate or any part thereof. These exceptions do not cover suits under the second portion of section 83, clause 16, for village expenses and other dues, and thus the term for such suits is one year.

No. 28.*

Before William C. Capper, Esq., C. S., Judicial Commissioner, Oudh.

SAHIBDIN (PLAINTIFF), APPELLANT, *v.* MAQSUD ALI (DEFENDANT),
RESPONDENT.

**1878
27th August.**

The following extracts from the judgment in the case above noted are circulated for the information and guidance of Rent Act Courts.

By order of Judicial Commissioner,
A. OWEN,
Officiating Registrar.

Held, that until the tenant has been compensated for any improvement made to the whole or any portion of the holding (jotha) he shall not

*Approved in *Mangal v. Jawahir*—(R. A. R. 41 of 1884).

be ejected from or be subject to enhancement of rent for any portion thereof, but that in each case the extent of the holding is an issue of fact.

No. 28

1878.

In Financial Commissioner's Circular No. 96, dated 14th November, 1868, the fourth abstract ruling is that "it has been held by some Courts that a notice of ejectment, if not good for the whole holding, is good for no part of it. This is incorrect. The tenant's objection should be admitted in respect to that portion only of his holding from which he can prove that he is not liable to be ejected."

Subsequently there issued by Financial Commissioner's Select Case No. 5, dated 4th June, 1870, being his judgment in Special Appeal No. 13 of 1870, *Sant Kunwar*, appellant, versus *Illifat Husain*, respondent. After consulting Colonels MacAndrew and Perkins, Captain Erskine, and Messrs. Braddon, Capper, Carnegie, and Davies, the Financial Commissioner ruled that "the equitable and legal reading of section 22 of the Rent Act appears to be this, that treating the holding (*jothe*) as a whole, the tenant shall not be ejected from, or be subject to, enhancement of the rent for any portion thereof, until he has been compensated for any improvement made to the whole or any portion thereof." And I do not find any subsequent ruling of this Court modifying this latter.

The above rulings are necessarily contradictory, but they seem to have given rise to differences in the practice of the Courts.

In my opinion the effect of the word "same" before "land" in section 22 is to restrict the general term "land in his occupation" to the particular land in which the improvements are made by the cultivator. And I concur with the Financial Commissioner in ruling that "land" is here equivalent to holding or "*jothe*." A certain amount of compactness in a holding would generally be necessary, but what the holding comprises is an issue of fact to be decided in each case.

If the land be a well defined and recognised "*jothe*" or the lease be for "25 bigahs as of old" or "old jagirs" or "purwa bijai," I think that improvements (section 23) of any

No. 28
1878.

part increase the letting value of the whole, as a whole, and bar ejectment from any part. But where the holding consists of scattered fields in different parts of a village, accidentally leased together, but so situate that improvements in one field cannot benefit others, I should not rule that the land, *i. e.*, the holding, was one and the same.

No. 29
1880.

No. 29.

Before William C. Capper, Esq., C. S., Judicial Commissioner, Oudh.

DUNIA PAT SINGH (DEFENDANT), APPELLANT, *v.* UMDA KHANAM
(PLAINTIFF), RESPONDENT.

*Oudh Rent Act (XIX of 1868), s. 41—Discretion as to ejectment of
occupancy tenant.*

Section 41 of the Rent Act, is silent as to the conditions on which a decree for ejectment may be made; and in allowing two months' grace in this case, the Court exercised a wise discretion.

1880
20th Dec.

Plaintiff had obtained a decree for Rs. 44-0-3 against defendant on account of arrears of rent; and, as this had not been paid, she sued to have him ejected from his occupancy holding. The court of first instance decreed the claim, with the proviso, that it was not to have effect if the decree-holder was paid in two months; against this she appealed, and the Commissioner reversed the order, holding that the Lower Court had no right to give the two months' grace, considering that an arrear of rent, for which a decree had been given, had remained unsatisfied for more than 15 days, and plaintiff was entitled to a decree (section 41).

I do not concur with the Commissioner's ruling that the Court had not any right to give the two months' grace. Section 41, Rent Act, is silent as to the conditions under which a decree of ejectment may be made. The proviso simply says that it shall not be made unless a decree against the tenant, with a right of occupancy, has remained unsatisfied for 15 days or upwards. In my opinion the Tehsildar exercised a wise discretion, as times have been hard on cultivators. The appeal is decreed.

No. 30.

No. 30

1881.

Before William C. Capper, Esq., C. S., Judicial Commissioner, Oudh.

SHERU KHAN AND FAJA KHAN (PLAINTIFFS), APPELLANTS, v. RANI SHEORAJ KUNWAR (DEFENDANT), RESPONDENT).

*Oudh Rent Act (XIX of 1868), s. 5—Criminal tribes of Amahat zamindars—
Right of occupancy.*

Held, that the less criminal tribes of the Amahat zamindars (to which class plaintiffs, appellants, belong), though they have forfeited and lost all proprietary rights, and their subordinate rights as existing at the annexation, are yet entitled to occupy their lands at a fixed rent. They are not excluded from the benefits of section 5 of the Rent Act, but may have a good claim under the section.

It is important that an authoritative decision should be come to as to the present position of the old Amahat Khanzadas, for it seems that in not a few instances the district Rent Act Courts have held that they are tenants-at-will and liable to be evicted by notice under section 42 of the Rent Act, as was held by the Courts below in these two cases and in that of Ali Hosein Khan, decided in appeal by this Court on the 18th January, 1881.

1881
15th March.

These Khanzadas, being a section of the Bajgote tribe of Thakurs converted to the Muhammadan religion, were at annexation found to be holding 25 villages in *bhaiachara* tenure, their leaders, a considerable body in number, being known as the Amahat talukdars, and the whole estate being engaged for as the Amahat taluka. At the summary settlement of 1856-57 A. D. (1264 Fasli), when it was the policy to break up talukas as much as possible, thirteen villages were settled with the talukdars and assessed at Rs. 3,484, the remaining twelve villages being settled at Rs. 4,829 with persons recognized in each case as proprietors, who may or may not have been Khanzada members of the tribe. Owing to the cantonments being stationed on their lands or for some other reason, these Khanzadas were conspicuous at the outbreak; and their lands not only fell under the proclamation of general confiscation, but that confiscation was specially maintained against them. The authority empowered to decide, subject to the

No. 30

1881.

general control of the Government of India, what cases should be excluded from the benefits of amnesty, and to determine what proprietary or other rights in land should be restored and to whom, was the Chief Commissioner, whose orders were received through Major Barrow, the Special Commissioner of Revenue.

That decision as to the 25 villages of Amahat was conveyed in Special Commissioner's letter to Commissioner, Fyzabad Division, No. 945 of 16th October, 1858. The whole estate was conferred on Babu Rustam Sah, the head of a branch of the Bajgote clan which had remained Hindu, and he thus became talukdar of Amahat and zamindar of the thirteen villages which in 1264 Fasli had been settled with the talukdars; whilst the zamindar proprietors of the twelve villages were to hold the villages for which they had engaged in 1264 Fasli, subordinate to the Babu: and having thus disposed of the talukdars and zamindars, the Chief Commissioner proceeded to decide as to the other innocent or less criminal members of the tribe, and directs that they should be allowed to occupy the lands at certain rates to be equitably fixed, as he was averse to drive a whole tribe into desperation or to make dacoits of them, and believes that as a tribe they will otherwise have been sufficiently punished.

The appellants in this case fall under this last class, and the decision of the specially authorised officer of that time was that they were to be allowed to occupy at a fixed fair rent, and I am not aware of any authority which has been empowered to revise or cancel these special instructions.

The Chief Commissioner did, in his Circulars No. 162, dated 24th November, 1859, and No. 75, dated 14th May, 1860, declare generally that inferior rights have been extinguished in confiscated estates conferred in reward on strangers. But on the 26th September, 1860, by Secretary's Circular No. 155-3432 of 1860, he, under the orders of the Government of India, cancelled those circulars and directed that the rights of the intermediate holders should be maintained. In the second para. of that circular he says "this ruling will not apply when the

persons on account of whose rebellion the estate was confiscated were themselves possessed of the inferior as well as of the superior rights, such as the zamindars of Amahat or other proprietary bodies. Confiscation extinguished all their rights." And in secretary's No. 2437 of 20th August, 1863, he further explains that the subordinate rights *as existing at annexation* were not recorded in the Amahat villages because the parties on account of whose rebellion the estate was confiscated were themselves possessed of the subordinate rights.

The Assistant Commissioner laid stress on a letter from Secretary to the Chief Commissioner to Commissioner of Fyzabad, No. 289 of 24th January, 1860 A. D., as seeming to entirely extinguish any Khanzada claims to occupancy rights in Sarauli; but as pointed out by the Commissioner in his judgment, that letter was merely executive, directing that the Commissioner's order for granting leases to certain Chandel occupants or inhabitants of the village should be cancelled, as the investigation of the Deputy Commissioner and the decision of the Commissioner had shown that these inhabitants had no real proprietary rights, and so far as it continued, "and even if they had once possessed them, they can no longer assert any claim to them, as the sentence of confiscation decreed against this village annuls all proprietary rights of the village occupants as well as of the rebel talukdars," it was rendered nugatory by the orders of the Government of India conveyed in the subsequent Circular No. 155-3432 of the 26th September 1860.

The result is that none of these subsequent circulars modify or clash with the orders of the Chief Commissioner conveyed in Special Commissioner's No. 945 of 16th October, 1858; and the less criminal of the Amahat zamindars, to which class plaintiffs, appellants, belong, though they have forfeited and lost all proprietary rights, and subordinate rights, as existing at the time of annexation, would seem to be, under the orders of the Chief Commissioner, specially given after full consideration of their case, to be entitled to occupy their lands at a fixed fair rent; and I would note that they are not expressly excluded

Nos. 30 & 31
1881.

from section 5, Act XIX of 1868, which was passed long subsequent to the last of the above quoted ruling and constructions, and it may be that they have a good claim under that section.

No. 31.*

Before William C. Capper, Esq., C. S., Judicial Commissioner, Oudh.

**SHEOPAL SINGH (PLAINTIFF), APPELLANT, v. RANI HARBANS
KUNWAR (DEFENDANT), RESPONDENT.**

*Oudh Rent Act (XIX of 1868), s. 41—Perpetual leases—Cancellation of for
arrears of rent.*

It is doubtful whether perpetual leases decreed to zamindars, whose claim to sub-settlement was dismissed, can be cancelled by the Rent Act Courts under sec. 41 on account of unsatisfied decrees for arrears of rent; but in any case the lease only would be cancelled, and the order for ejectment would not affect the lessees' zamindari rights, or their right to retain all that they are entitled to independent of the lease.

1881
17th May.

By the Settlement Courts, those from whom plaintiff (appellant) takes, were found to be zamindars of Odeypur, whose village was forcibly seized by the talukdar from whom defendant (respondent) descends.

On 29th April, 1869, their claim to a sub-settlement, under Act XXVI of 1866, was finally dismissed by the Commissioner of Rae Bareilly Division, owing to their not being able to prove the points required by the rules. The Court, however, suggested that the talukdar should give them a perpetual lease of the village at a moderate rent.

On the 14th June this was formally conceded before the Assistant Settlement Officer, and the parties agreed to leave it to him to fix the rent. He fixed it at Rs. 1,500, and this arrangement was confirmed in appeal No. 937 on 26th August, 1869, by Commissioner, and finally by Financial Commissioner in No. 1,032 on 18th February, 1870, who commented on the good terms the talukdar had secured.

* Referred to in *Hon'ble Maharaja Partab Narain Singh v. Har Parshad Pande*—(R. A. R. 58 of 1890).

On the 13th March, 1872, Mr. Steinbelt, Assistant Commissioner in the Rent Act Court, gave a decree for ejectment of defendants, owing to there being unsatisfied a large decree for rent against them, and this was confirmed. I have often before expressed grave doubts whether Rent Courts have any jurisdiction in respect to perpetual leases, and I think it very likely that this decree was "ultra vires," but it is certain that its outside legal effect would be to cancel the lease. They could not affect the lessees' zamindari rights, or their rights to hold what they were entitled to independent of the lease, for the Rent Act Courts have no jurisdiction in respect to such rights.

The finding of the Extra Assistant Commissioner in this case, that the 13th March, 1872, extinguished *all* their proprietary rights, would be almost ludicrously wrong, were it not for the monstrous injustice it inflicts on those against whom the law had been very probably overstrained by the Rent Act Courts before; and I am much surprised at the Commissioner confirming such a judgment.

The land, concerning which notice of ejectment has now been served on the zamindar, is claimed by him as his "*sir*," and *prima facie* it is so. Anyhow, it is certain that he is not a tenant-at-will, and therefore he is not liable to notice under section 42 of the Rent Act.

No. 32.

Before William C. Capper, Esq., C. S., Judicial Commissioner, Oudh.

PARSHAD (DEFENDANT), APPELLANT, *v.* JEONI (PLAINTIFF), RESPONDENT.

*Oudh Rent Act (XIX of 1868), s. 5—Sale of proprietary rights—Sir—
Right of occupancy.*

Held, that though there is nothing to prevent the parties to a sale from bargaining themselves out of the provisions of section 5 of the Rent Act, yet when no mention is made of "*sir*" in the deed of sale, the seller retains any rights he may have under the section.

This is an objection to ejectment by notice from 5 bigahs 3 biswas 16 biswansis of land in Mouza Dehgaon, pargana Bangarmau, District Hardoi.

Nos. 31 & 32
1881.

1881
28th June.

No. 32

1881.

Parshad, father of Jeoni Ahir, plaintiff, appellant, sold all his proprietary rights in his share to Bhagwandin from whom Parshad, 2nd defendant, appellant, acquired it by right of pre-emption. In the deed there is no mention of "*sír*," and no rights are reserved. But the land in question was the self-cultivated "*sír*" of the seller, and his son (Jeoni) remained in cultivating occupancy subsequent to the sale and up to date.

The Court of first instance found that, as the entire patti was sold without any reservation and these fields were included no right was left; and he dismissed the objection.

The Commissioner in appeal found that the *sír* lands have always been divided and held in severalty by the sharers, although the rest of the lands are held in common; and as the defendant did not pretend that plaintiff or those from whom he has inherited have been out of possession at any time, the presumption was that plaintiff, respondent, had a right of occupancy under section 5 of the Rent Act. He, therefore, decreed the appeal, and, on the 18th October, 1880, upheld the objection and disallowed the notice of ejectment. Against this decree the defendant appealed to this Court; but, on the day fixed for hearing, parties appeared without counsel, and were totally incapable of arguing the point of law.

As the point is important, and no ruling of this Court seemed to exist, and the Rent Act Courts have jurisdiction to determine claims to a right of occupancy under section 5 whenever it comes before them, on the 6th April, 1881, I remanded the case to the Court of first instance for trial of the issue: Has plaintiff (now respondent) a right of occupancy in these fields under the rule of section 5, Act XIX of 1868, or not?

The Deputy Commissioner has found that he has, ruling that, though there is nothing to prevent the parties to a sale from bargaining themselves out of the provisions of section 5 of the Rent Act, where no mention is made of "*sír*" in the deed of sale, the seller retains any rights he may have under the rule. No objection under section 567 of Act X of 1877 has

been filed by either party, nor has any one argued against the ruling to-day. I therefore accept it, and consequently this appeal is dismissed.

Nos. 32 & 33
1881-82.

No. 33.

Before H. J. Sparks, Esq., C. S., Judicial Commissioner, Oudh.

KISHAN SINGH AND OTHERS (DEFENDANTS), APPELLANTS, v. KORWAR ESTATE (PLAINTIFF), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 25—Application to determine amount of compensation.

Held, that before either party has a right to apply under section 25 of Act XIX of 1868, some compensation must have been tendered and not agreed to.

The respondent filed an application under section 25 of the Oudh Rent Act, stating that the appellants had objected to a notice of ejectment on the ground of improvements. To the best of his (respondent's) knowledge, the appellants had made no improvements. But it would be convenient to have the question decided, and he therefore prayed the Court to decide what compensation, if any, should be paid.

1882
7th Sept.

The Assistant Commissioner observed that there was nothing for him to go on and rejected the application.

The Commissioner did not see why the question should not be decided under section 35 and remanded the case for trial.

In appeal it is urged that the appellants are zamindars not mere tenants. But this point need not be considered, for the Commissioner's order cannot stand in any case.

Section 25 of the Oudh Rent Act runs thus :—"In cases of difference as to the amount or value of the compensation tendered, either party may present an application to the Court, stating the matter in dispute and requesting a determination thereof," and goes on to describe the procedure to be followed by the Court on receiving such application.

It is clear from this that before either party has a right to apply under section 25, some compensation must have been tendered, and there must have been a difference as to the amount or value so tendered.

Nos. 33, 34,
and 35
1882.

In this case the respondent's own application shows that, so far from having tendered any compensation, he denied the existence of any improvement requiring compensation. There has been no tender, and there was no dispute as to the amount or value of the compensation tendered. The respondent had, therefore, no foundation on which to base his application under section 25.

No. 34.

Before H. J. Sparks, Esq., C. S., Judicial Commissioner, Oudh.

BHAYA HARRATAN SINGH (PLAINTIFF), APPELLANT, *v.* SOMAI
AND OTHERS (DEFENDANTS), RESPONDENTS.

Code of Civil Procedure (XIV of 1882), s. 43.

Held, that when a plaintiff omits to sue for, or relinquishes, any portion of his claim, a second suit for that portion is barred.

1882
7th Sept.

The point referred is whether a landlord who, when the rent for the years 1286 and 1287 Fasli was due from a tenant, sued and obtained a decree for the rent of 1286 Fasli only, can now sue for the rent of 1287 Fasli.

I am of opinion that the second suit is barred by section 43, Act XIV of 1882; and this view has been adopted by the Calcutta High Court in the case of *Tarack Chander Mukerji* (defendant-appellant) versus *Panchu Mohini Debya* (plaintiff-appellant), (I. L. R., Calcutta, VI, page 791).

No. 35. *

Before H. J. Sparks, Esq., C. S., Judicial Commissioner, Oudh.

THAKUR FAZAL ALI KHAN (DEFENDANT), APPELLANT, *v.* UMRAO
(PLAINTIFF), RESPONDENT.

Oudh Rent Act (XIX of 1868), ss. 37, 83 (8)—Plea of compensation in suit contesting notice of ejectment.

Held, that a tenant cannot contest a notice of ejectment on the ground that he has not received compensation for unexhausted improvements.

* Cancelled by *Mangal v. Jawahir*—(R. A. R. 41).

The plaintiff filed a suit to contest a notice of ejectment, urging that he had received no compensation for improvements, and that the notice was irregular, as the rent was said to be Rs. 147-15-6, whereas it really was Rs. 157-4-0.

The second objection was not deserving of any consideration. The Rent Act (section 43) does not require the rent to be mentioned in a notice of ejectment, and the error, if error it were, did not invalidate the notice. The notice of ejectment has been cancelled simply and solely on the ground that plaintiff's uncle built a masonry well, for which no compensation has been paid by the landlord.

It is not very clear whether the well in question is on the land in the occupation of the plaintiff. If it is not, the plaintiff is not entitled to compensation, as pointed out in the case of *Chandka Singh* versus *Lal Chattarpal Singh* (Rent Act Ruling No. 26 of 1876).

But assuming the well to be on the land in Umrao's occupation, there is another objection—namely, that unexhausted improvements are not a ground on which a notice of ejectment can be contested.

Section 37 of the Rent Act lays down the three grounds on which a tenant may contest his liability to be ejected. They are :—

“*First*.—That he holds a lease or an agreement, or a decree of court, under the terms of which he is not liable to such ejectment.”

“*Second*.—That he has a right of occupancy in the land.”

“*Third*.—And if he be a tenant not having a right of occupancy, that notice of ejectment has not been served upon him in manner provided by section 43.”

The Judicial Commissioner, however, in the case of *Mansa Ahir* versus *Raja Ragpal Singh* (Rent Act Ruling No. 5 of 1871) held that if, in a suit to contest a notice of ejectment, there is reasonable ground for believing that the plaintiff is

No. 35**1882.**

entitled to some compensation, the notice of ejectment should be cancelled. This ruling has added a fourth ground to the three mentioned in section 37 of the Act, and the result is that in far the greater proportion of suits instituted under clause 8, section 83 of the Oudh Rent Act, the notices are contested on the ground of unexhausted improvements. This result is not satisfactory. The indiscriminate issue of notices of ejectment has been encouraged and much fruitless litigation has ensued. Had half the money that has been wasted in contesting notices been expended in suits for compensation, landlords would have been far more careful in issuing notices, and much ill-feeling would have been avoided.

The decision in Rent Act Ruling No. 5 which is referred to by Umrao in his plaint has always appeared to me to be wrong; but it has been followed so long that I am very unwilling to interfere with it, and it is only after much consideration that I now do so.

In this suit the plaintiff has not contested the notice of ejectment on any of the grounds mentioned in section 37 of the Oudh Rent Act. The notice has been set aside on the ground that plaintiff's uncle built a masonry well sixteen years ago. Assuming that well to be on the land in plaintiff's occupation, his landlord had no right to raise his rent, or eject him, till he had received compensation for his uncle's outlay (section 22). In April, 1881, the defendant served a notice of ejectment on the plaintiff. The ejectment would have had no effect before the 15th May, 1881, (section 44), and if before that date the defendant had paid the plaintiff any compensation to which he might have been entitled under section 22 of the Oudh Rent Act, the plaintiff would have had no right to retain his holding. The plaintiff therefore had no ground of action when he instituted his suit on the 4th May.

If on, or before the 15th May the defendant had not paid the plaintiff the compensation to which he was entitled, the plaintiff would then have had a cause of action, and the Oudh Rent Act gives him the choice of several remedies. He might

have sued under section 83, clause 9, for compensation on account of illegal ejectment, or under clause 10 for the recovery of the occupancy of the land from which he had been illegally ejected, or under clause 13 for the recovery of compensation for improvements in accordance with the provisions of section 22; or he might have sued under clauses 9 and 10 for the recovery of the land and for compensation, or under clauses 9 and 13 for compensation on account of illegal ejectment and for improvements. But he had no cause of action under section 37, and a suit under section 83, clause 8, to contest a notice of ejectment could not be maintained.

Nos. 35 & 36
1882-83.

The plaintiff mistook his remedy, and the decrees of the Lower Courts cancelling the notice of ejectment must be set aside and the notice of ejectment upheld. Under Rent Act Ruling No. 12 it cannot take effect till the first April next. If it be then enforced, the plaintiff, if so advised, can institute a suit under clauses 9, 10 or 13 of section 83.

This decision cancels Rent Act Ruling No. 5 of 1871.

No. 36.

Before H. J. Sparks, Esq., C. S., Judicial Commissioner, Oudh.

BABU SARABJIT SINGH (PLAINTIFF), APPELLANT, v. GANGA DIN SINGH AND 19 OTHERS (DEFENDANTS), RESPONDENTS.

Act XIX of 1868, s. 32—Perpetual lessees—Enhancement of rent of.

Held, that defendants, the holders of a heritable non-transferable lease of a whole village, are not tenants with rights of occupancy under the Oudh Rent Act, and that section 32 of the Oudh Rent Act cannot apply to them.

Held, also, that the rent to be paid by the defendants can only be determined by a Settlement Officer under sections 40 and 181, Act XVII of 1876.

The defendants (respondents) hold a decree for Mauza Thaura on a perpetual lease—not transferable—at a rent to be fixed at a sum which will leave 12 per cent. clear profits to the lessees; the amount of the lease under the 12 per cent.

1883
23rd May.

Nos. 36 & 37 condition to be liable to be re-determined after the expiration
1883. of every ten years.

The ten years having expired, the landlord, plaintiff (appellant) sued under section 32 of the Oudh Rent Act for enhancement of rent. The Deputy Collector gave the plaintiff a decree, but the Commissioner reversed this decree in appeal, holding that the suit could not be entertained under section 32 of the Oudh Rent Act.

I agree with the Commissioner that the suit should have been rejected. The defendants are not tenants with rights of occupancy under the Oudh Rent Act but are the holders of a heritable non-transferable lease of the whole village. Section 32 of the Oudh Rent Act cannot apply to lessees of a whole village, for it refers to land in the same village held by other tenants.

The pleader for the appellant urges that there is no other section of the Oudh Rent Act under which the Rent Court could enhance the rent of the defendants. Had the plaintiff calculated the rent according to the terms of the decree, and had the defendants refused to pay that rent, a suit under section 83, clause 4, for cancelling the lease on account of a breach of its conditions might possibly have succeeded. The plaintiff, however, has not sued for ejectment, but for enhancement of rent. The Rent Courts have no jurisdiction in this matter. The rent to be paid by defendants (respondents) can only be determined by a Settlement Officer, *vide* sections 40 and 181, Act XVII of 1876.

No. 37.

Before H. J. Sparks, Esq., C. S., Judicial Commissioner, Oudh.

SUKHDEO (PLAINTIFF), APPELLANT, *v.* SRI KISHEN (DEFENDANT),
 RESPONDENT.

Suit for arrears of rent—Court-fee should be calculated on aggregate sum claimed.

Held, that when a landlord sues for arrears of rent the Court-fee should be calculated on the aggregate sum claimed, irrespective of the number of kists or instalments of which it may be made up.

The Deputy Commissioner, Gonda, has referred this case under section 617 of the Code of Civil Procedure.

No. 37

1883.

1883

13th July.

The plaintiff has sued for Rs. 20, arrears of rent, namely—

For 1287 Fasli Rs. 7 7 0

„ 1288 „ „ 12 9 0

and the question referred is whether the Court-fee should be Rs. 1-8-0 calculated on the total Rs. 20 or Re. 1-14-0, *viz.*, Re. 0-12-0 for Rs. 7-7-0 and Re. 1-2-0 for Rs. 12-9-0. The parties have come in but can say nothing on the point referred; the plaintiff simply expresses his readiness to make good the Court-fee, if it is deficient.

The Deputy Commissioner refers to a decision of the Allahabad High Court, *Mahip Narain and another* versus *Jagat Narain and others*. It is apparently unreported, but the Deputy Commissioner has attached a manuscript copy to his reference. In that case it seems the claim was for the profits of two years, namely—

For 1281 Fasli ... Rs. 846 15 3

„ 1282 „ ... „ 1,295 14 3

Total Rs. 2,142 13 6

The plaintiffs computed the Court-fee on the total Rs. 2,142-13-6. The taxing officer referred the question whether the Court-fee should be computed on the aggregate value or separately on the amount of profits claimed for each year. The Court ordered: “The deficiency to be made up within a fortnight, failing which the appeal would not be heard.”

The question before me is whether the arrears of rent due on account of the years 1287 and 1288 Fasli are distinct subjects. I am of opinion that they are not. The plaintiff sues for Rs. 20 arrears of rent, and the mere fact that these twenty rupees comprise items which fell due on different dates, does not split the subject-matter of the suit, namely arrears of rent, into two or more distinct subjects. If the rent for each year were a distinct subject, a landlord, to whom rent for three years was due, would be liable to sue his tenant separately for

Nos. 37 & 38
1883.

each year's rent ; but the illustration to section 43 of the Code of Civil Procedure shows that he cannot do that, and it follows that each year's rent is not a distinct subject. The reasons which led the Allahabad High Court to hold that the profits of two years were distinct subjects, have not been given in the copy furnished by the Deputy Commissioner, and I am therefore unable to say whether they would apply with equal force to arrears of rent. My decision on the point referred is that the Court-fee of Rs. 1-8-0 is sufficient, and that when a landlord sues for arrears of rent, the Court-fee should be calculated on the aggregate sum claimed, irrespective of the number of kists or instalments of which it is made up.

No. 38.

Before H. J. Sparks, Esq., C. S., Judicial Commissioner, Oudh.

RAJA MADHO SINGH (PLAINTIFF), APPELLANT, v. BINDA AND 4 OTHERS
(DEFENDANTS), RESPONDENTS.

Act XIX of 1868, s. 83, clause 4—Grounds for ejectment of tenant—Court-fee.

Held, that under clause (4), section 83 of the Oudh Rent Act, a landlord can sue for the ejectment of a tenant on any grounds.

Held, further, that the cause of action arose when the tenants refused to give up their holding.

Also, that the Court-fee in such suits when the Government Revenue has not been separately assessed on the holding should be calculated under section 7-V., clause (d) of the Court Fees Act on the market-value of the land.

1883
18th July.

The original appellant having since the institution of this appeal assigned his rights in the estate to Raja Madho Singh, the last named person has been substituted for the original appellant.

The facts of the case are as follows :—On the 28th April, the defendants-respondents obtained a decree for a right of occupancy so long as certain lessees remained in possession of the village. The talukdar was originally a defendant to that suit, but he was released and the above-mentioned decree was given against the lessees by consent,

Afterwards in 1285 Fasli, the lease was cancelled. The plaintiff (talukdar) has now sued under clause (4), section 83 of the Oudh Rent Act to eject the defendants-respondents. The Extra Assistant Commissioner decreed the claim, but his decree was reversed on appeal by the Commissioner who recorded :—
“This suit contains no element which makes clause 4, section 83, apply to it. It is not a suit for ejectment for arrears for it is admitted that there were no arrears; nor is it one for cancellation of a lease for that was obtained five years ago; and it of course cannot be for breach of conditions of a lease which was cancelled five years ago. It should have been thrown out at once; moreover it is barred by limitation.”

The points for decision are whether, under clause (4), section 83 of the Oudh Rent Act, a landlord cannot sue to eject a tenant, except on account of the non-payment of arrears of rent; limitation; and whether the defendants-respondents are entitled to compensation for improvements.

The first point has already been decided by this Court in the case of *Indarjit* versus *Dallau Kurmi* (Rent Act Ruling No. 25). In that suit the Judicial Commissioner wrote :—“I am aware that it might be contended that a suit for the ejectment of a tenant under section 83, clause 4, must be laid on the non-payment of arrears of rent; but I am of opinion that this contention cannot be maintained, and that the wording of the clause covers all suits for the ejectment of a tenant, whatever may be the ground on which the ejectment is sought.” In this opinion I entirely concur. It appears to me that under clause (4), section 83 of the Oudh Rent Act, the landlord can not only sue to cancel a lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of such lease, but he can sue for the ejectment of a tenant on any grounds.

The Commissioner has not given his reasons for holding that the suit is barred by limitation. In the Court of first instance it was urged that the limitation was one year under section 104 of the Oudh Rent Act. In the appeal to the Commissioner, it was urged by the defendants (then appellants)

No. 38

1883.

that the limitation was three years. Before me the pleader for the defendants-respondents urges that the limitation was one year, which began to run from the time the lease was cancelled in 1285 Fasli. I am of opinion that the suit is not barred; the cause of action arose in November, 1881, when the tenants refused to leave the land and the suit was brought in February, 1882, or in less than four months.

Compensation was claimed on account of a well which the Court of first instance found had been built for more than thirty years. The pleader for the appellant urges that claims for compensation should be instituted in the Civil Court. With reference to this objection it is enough to observe that the pleader must have overlooked the provisions of sections 22, 26 and 83 of the Oudh Rent Act. It is clear from those sections that claims for compensation for improvements can be heard by the Rent Courts and by the Rent Courts only.

The Extra Assistant Commissioner found that the evidence of the plaintiff (appellant) to the effect that the well had been built forty years before, was more trustworthy than that of the witnesses of the defendants-respondents whose testimony he considered conflicting and unsatisfactory. In their appeal to the Commissioner the defendants urged that the Extra Assistant Commissioner had paid no attention to their witnesses, and that he ought to have ordered a local enquiry. I am unable to say that the Extra Assistant Commissioner was wrong in his estimate of the witnesses for the defendants; and there was nothing irregular in his not ordering a local investigation. *Prima facie* there was no necessity for a local enquiry and neither party applied for one.

I must note also that the well in question is not on the 13 bighas 1 biswa, which forms the subject of this suit, but on other land in which the defendants-respondents do not claim a right of occupancy.

It was for the defendants-respondents to produce evidence in support of their case and the witnesses they produced failed to prove that they were entitled to compensation under section 22 of the Oudh Rent Act.

The decree of the Commissioner, dated the 21st June 1882, is set aside, and that of the Extra Assistant Commissioner, dated the 14th April, 1882, restored.

Nos. 38 & 39
1883.

In the Lower Courts a Court-fee of Rs. 210 only was taken. This appears to have been calculated on the annual rent of the land. The suit, however, does not fall under clause XI, section 7 of the Court Fees Act, but under clause V (d) of the same section, as the holding in suit has not been separately assessed for revenue.

The deficient Court-fees have been realised in this Court under section 12 of the Court Fees Act.

No. 39.

Before H. J. Sparks, Esq., C. S., Judicial Commissioner, Oudh.

NAWAB ALI KHAN (DEFENDANT), APPELLANT, v. SUBHKARAN SINGH
(PLAINTIFF), RESPONDENT.

Issue of notices of ejectment by Agent—Court should not invite party to apply for review of judgment.

Held, that a landlord can lawfully authorise his managing agent to issue notices of ejectments, and pointed out that a Judge should not invite an unsuccessful party to apply for review of judgment in the event of his being able subsequently to produce an authority to which the attention of the Judge was not called at the trial.

The plaintiff (respondent) contested a notice of ejectment on the ground that he was a mortgagee not a simple tenant. The Deputy Collector cancelled the notice because it was not signed by the landlord but by his agent. "The law," he observed, "does not authorize a landlord to delegate his power to issue a notice to any other person. As the notice does not bear the signature of the landlord I cancel it."

The Commissioner upheld this decision recording—"The question for determination then is—Can a landlord delegate to his agent his right to issue a notice of ejectment? The appellant's agent is unable to support his assertion that a landlord is so authorized, and as I am clearly of opinion that,

No. 39

1883.

"under the Oudh Rent Act, the right to issue notices of ejectment is not transferable, I affirm the order of the Lower Court, and dismiss this appeal with costs. If the appellant is able to produce any authoritative ruling or precedent to the contrary, he may apply for review of judgment."

It is laid down in the Oudh Rent Act, section 42, that a tenant not having a right of occupancy, and not holding under an unexpired lease, or an agreement or a decree of Court, may be ejected "by a notice given by his landlord in the manner prescribed in section 43." In section 43, it is said the notice, mentioned in section 42, shall be written in Hindi and in Urdu, and it shall specify the land from which the tenant is to be ejected, but it is not said, that the notice shall be signed by the landlord. The mere fact that a notice of ejectment does not bear the signature of the landlord does not vitiate the notice.

The general rule is that any person who is of age and of sound mind may employ an agent, and that an agent having authority to do an act, has authority to do every lawful thing which is necessary in order to do such act, (Act IX of 1872, sections 183 and 188). An agent authorized to manage the estate of his principal would be authorized to eject an objectionable tenant unless there were any special rule to the contrary. No such special rule has been quoted by either of the Lower Courts, and I am aware of none. I am therefore of opinion that a landlord can lawfully authorize his managing agent to issue notices of ejectment.

In this case the agent was specially authorized by his power-of-attorney to eject tenants; the notice was signed by him as agent; and that the tenant was in no way misled by the signature is proved by the fact that he instituted his suit against the principal, not against the agent.

The case having been disposed of on this preliminary point, no evidence was taken regarding the plaintiff's right to hold as mortgagee. The decision of the Lower Courts is reversed as regards the notice being invalid because not signed by the

landlord himself, and the case is remanded to the Court of first instance under section 562, Code of Civil Procedure, to be tried on its merits. Nos. 39 & 40
1883-84.

The Commissioner in the last part of his judgment informed the defendant that he might apply for review of judgment if able to produce a precedent contrary to the Commissioner's decision. It would have been better had this passage been omitted, for the production of an authority to which the attention of the Judge was not called during the trial, is no sufficient ground for granting a review (*Ellen and another versus Basheer and another* I. L. R., Cal., I, page 184).

No. 40.

Before W. Young, Esq., C. S., Offg. Judicial Commissioner, Oudh.

SITA RAM (PLAINTIFF), APPELLANT, v. RAM AUTAR (DEFENDANT),
RESPONDENT.

Notice of ejectment for portion of holding.

Held, that a notice of ejectment for a portion only of a holding is on the face of it bad and must be cancelled [where the entire holding is assessed at a lump rental—*bil-mukhta*.]

This is an appeal from the order dated 16th January, 1883, of the Officiating Commissioner of Rae Bareilly, confirming order of Extra Assistant Commissioner of Partabgarh, dated 23rd July, 1882, upholding a certain notice of ejectment.

1884
8th August.

I returned the case to the Commissioner for inquiry as to whether the plaintiff-appellant held his fields "*bil-mukhta*," that is, at a lump rental for the whole holding, or separately, that is, field by field at fixed rentals per field.

The Commissioner replies that from his inquiries he has ascertained that the holding is held in the former manner, *i. e.*, on a lump total rent for the whole of the land.

Under these circumstances, without going further into the merits of the case, I am of opinion that the present notice of ejectment, which is for a portion only of the holding, is on the face of it bad and must be cancelled; for it seeks to

Nos. 40 & 41
1884.

alter the existing implied contract of the parties, and to substitute therefore one of a totally different character.

It might possibly be within respondent's competence to eject appellant from the whole holding, but it obviously cannot be in his power to compel appellant to keep a part, which may be, for all we can say, nearly valueless, and to give up another part, which may be profitable.

Where a holding is "*bil-mukhta*," notice of ejectment to be valid must apply to the whole holding.

Appeal decreed with costs in all Courts.

No. 41.

Before W. Young, Esq., C. S., Offg. Judicial Commissioner, Oudh.

MANGAL (DEFENDANT), APPELLANT, v. JAWAHIR (PLAINTIFF),
RESPONDENT.

Compensation for improvements.

Held, that Rent Act Ruling No. 35 of 1882 is irreconcilable with the real meaning of Act XIX of 1868, and is diametrically opposed to Rent Act Ruling Nos. 8 of 1871 and 23 of 1878, and opposes the Financial Commissioner's decision in case No. 5 of 1870.

Held, further that payment for unexhausted improvements is a pre-requisite to enable a landlord to eject.

The reference was as follows:—

1884
1st Nov.

Has the promulgation of Rent Act Ruling No. 35 *ipso facto* removed the objection found by a Court of competent jurisdiction to exist in cases regarding uncompensated improvement, and should the second notice of ejectment be held to be good and valid, or should the Court simply find that a notice of ejectment has been once before formally cancelled, and therefore cannot be again issued under Rent Act Ruling No. 8 until the objection found by a competent Court to exist has been removed by a specific compliance with the Court's order, *i.e.*, that the compensation has been actually paid.

I am of opinion that Rent Act Ruling No. 35 of 1882 is unsound, and cancel it accordingly. My reasons for this con-

clusion are because the said Rent Act Ruling seems to me irreconcilable with the real meaning of Act XIX of 1868; and secondly, because that Ruling is diametrically opposed to Rent Act Rulings 8 of 1871 and 28 of 1878, which it nevertheless does not expressly cancel, though it does expressly cancel Rent Act Ruling 5 of 1871.

This Ruling (35 of 1882), moreover, opposes the Financial Commissioner's decision in case No. 5 of 1870, to which it however does not make reference.

As matters now stand, there is consequently a direct conflict of authoritative rulings on the point before me, to wit, the validity of a plea of non-payment for unexhausted improvements as a plea to contest liability to ejectment, and it becomes my duty accordingly to choose that opinion which is in my judgment on the whole preferable.

The different sections of the law must be read together and not separately. We find then that by section 22, Act XIX of 1868 a tenant cannot have his rent enhanced nor can he be ejected, &c., "unless and *until* he has received" compensation, &c., for the improvements made by him on his land, &c.

Payment for unexhausted improvements then is a prerequisite to enable a landlord to eject.

This being so, a landlord has, in my judgment, no right to serve notice of ejectment upon a tenant until he has compensated such tenant. The law supposes that the landlord has qualified himself to eject by previous payment of compensation, and this presumably is why the non-payment of compensation is not entered in section 37 of the Act (XIX of 1868) as one of the grounds upon which a tenant may contest his liability to ejectment.

A contrary interpretation of section 37 leads to this, that by means of this very law a tenant *is* ejected, who by section 22 of the same Act is declared *not* then liable to ejectment. Such reading of section 37 makes it nullify the previous provisions of section 22, and this although section 37 in nowise

No. 41 & 42
1884. expressly excludes non-payment for unexhausted improvements as a ground of contesting liability to ejectment.

It will be observed that section 37, while it lays down that a tenant *may* contest liability to ejectment on any of three specified grounds, does *not* add "but on no other ground." For these reasons I am constrained to disapprove of Rent Act Ruling No. 35 of 1882, and I cancel it accordingly.

Rent Act Ruling No. 5 of 1871 is hereby restored.

No. 42.

Before T. B. Tracy, Esq., C. S., Offg. Judicial Commissioner, Oudh.

SURAJ BAKHSH AND OTHERS (DEFENDANTS), APPELLANTS
v. DEPUTY COMMISSIONER, SULTANPUR, IN CHARGE OF
MAHONA ESTATE (PLAINTIFF), RESPONDENT.

Trial by Deputy Commissioner of suit instituted by him as Manager of an estate under the Court of Wards.

Held, that it is anomalous and improper for District Officers in their judicial capacity to deal with suits preferred by themselves either as Managers of estates or as the Agents of Government.

1884
19th Dec.

In this suit the plaintiff is the Deputy Commissioner of Sultanpur, who is *ex-officio* Manager of the Mahona estate under the Court of Wards. The suit was originally filed in the Court of an Extra Assistant Commissioner, by which it was dismissed. On this the plaintiff, Manager of the estate, appealed to the Court of the Deputy Commissioner, which reversed the judgment of the Court of first instance, and decreed in full in favor of the estate. The tenant, defendant, has appealed to this Court, and the plaintiff, Manager of the estate, has filed certain objections under section 561 of Civil Procedure Code, to the order of the Deputy Commissioner as to costs.

It appears to me that the trial of the appeal by the Deputy Commissioner, in a case in which he was himself the plaintiff, and in which he had a direct, though not of course a personal, interest was in violation of a fundamental legal principle of universal application. It is obviously anomalous

and improper for District Officers in their judicial capacity to deal with suits preferred by themselves either as Managers of estates or as the Agents of Government. I am, therefore, constrained to quash the proceedings in the Court of the Deputy Commissioner, and under section 98 of Act XIX of 1868, to direct that the appeal shall be transferred to the Court of the Commissioner of the Division. Under the circumstances, I direct that the costs of the appellant shall be paid by the estate.

Nos. 42 & 43
1884-85.

No. 43.

Before W. Duthoit, Esq., D. C. L.

BHONDU DAS (DEFENDANT), APPELLANT, v. KHANJAN SINGH
(PLAINTIFF), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 5—Meaning of the word “lost”—Conditions requisite for acquisition of a right of occupancy.

The word “lost” in section 5 of the Oudh Rent Act was intended to cover all cases in which a proprietor of land has either voluntarily or by operation of law deprived himself permanently or temporarily of the power to exercise full proprietary right over his property. For the establishment of an occupancy right under the provisions of section 5 of the Oudh Rent Act, two things are requisite, *viz.*:—(a) that the claimant shall have occupied the land in question before the 13th February 1856; and (b), that he shall have been in possession as proprietor of the particular village or estate in which the land is situate at some time between the 12th February 1826, and the 13th February 1856. As regards persons admitted to settlement the existence of these facts will ordinarily be presumed against the party contesting the claimant's ex-proprietary right of occupancy.

All that I am in this, and in the following appeals, called upon to decide is this:—Has the land in dispute (which at the time of the transfer of possession of the plaintiff's zemindari share to the defendant, by usufructuary mortgage on the 14th January 1882, was held by him as *sir*) become by virtue of such transfer, and the plaintiff's wish to continue to occupy it as cultivator, the plaintiff's occupancy tenure in the terms of section 5, Act XIX of 1868, as the plaintiff (respondent) contends; or, as the defendant (appellant) contends, do the provisions of section 5, Act XIX of 1868, not affect the land

1885
2nd Nov.

Nos. 43 & 44 in dispute, and has the plaintiff ceased, by reason of the transfer
1885. of his zemindari share, to have any further concern with the land? In other words, I have to find:—

(1) What is the meaning of the word “lost” in the first clause of section 5, Act XIX of 1868; and

(2) What is the effect, as against the respondent, of the restrictions of the “Rule” which forms part of the provisions of section 5, Act XIX of 1868?

As regards the meaning of the word “lost” I am of the opinion of Straight, J., in *Inder Sen versus Naubat Singh*, I. L. R. 7 All. at p. 555, viz., that the word must be held “to cover all cases in which a proprietor of land has either voluntarily or by operation of law, deprived himself permanently or temporarily of the power to exercise full proprietary right over his property.”

As regards what has been called, in the argument at the bar, the retrospective or prospective effect of the provisions of section 5, Act XIX of 1868, I am of opinion that those persons only can be held entitled to the occupancy right established by the provisions of the law who, in the way set out in the Rule, have (a), occupied the land in question before the 13th February 1856, and (b) been in possession, as proprietors, of the particular village or estate in which the land is situate at some time between the 12th February 1826 and the 13th February 1856; but that as regards a proprietor who has been admitted to settlement, the existence of both these conditions should ordinarily be presumed, and the burden of proving their absence be cast upon the party contesting the ex-proprietary right of occupancy.

No. 44.

Before W. Duthoit, Esq., D. C. L.

MUSAMMAT BADAM KUNWAR (DEFENDANT), APPELLANT, v.
 BHUKAM SINGH (PLAINTIFF), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 22—Compensation for improvements.

Held, that the words of section 22, Act XIX of 1868, “If any tenant ... make any improvements on the land in his occupation” must be read as meaning “if any tenant-at-will make any improvements on the

and which is in his occupation as such tenant ; " and that if a man holds some land in a *mohal* as a mere tenant-at-will, and as regards other land in the *mohal* occupied by him has rights other than those of a mere tenant-at-will, and makes improvements in the latter portion of his holding, he cannot by virtue of such improvements claim the benefit of section 22, Act XIX of 1868, as regards the former portion of his holding. *Sant Kurmi v. Shah Illifat Ahmad* (1) and *Chandka Singh v. Lal Chattarpal Singh* (2); referred to.

No. 44

1885.

This is an appeal from a decree of the Commissioner of Rae Bareli reversing a decree of an Extra Assistant Commissioner of Rae Bareli, and decreeing the plaintiff's suit (clause 8, section 83, Act XIX of 1868) contesting a notice of ejectment.

1885
21st Dec.

The facts are correctly stated in the judgment of the Lower Appellate Court as follows :—

"There are two *thokes*, Ram Din 6 annas, Rajpaul 10 annas. In the former there are three, in the latter five, patties. The plaintiff (appellant) is a sharer in *thoke* Rajpaul, the defendant (respondent) is a pattidar in *thoke* Ram Din; some pattis are held as imperfect pattadari, some as zemindari tenures. The fields in suit 144, 151, 244=3 bighas are in the defendant's patti, and are held by the plaintiff as an ordinary tenant. Plaintiff's objection to notice is that he is entitled to compensation for improvements on account of a well built by him on plot No. 140 and irrigating the three fields in suit. Plot No. 140 is *shamilat* of the village and is also cultivated by plaintiff under a patta given on behalf of all the village sharers, of whom he is one."

The Court of first instance dismissed the suit. The material portion of the finding of the Lower Appellate Court is in these terms :—

"The point for determination is whether, under the provisions of section 22 of the Rent Act, plaintiff is *prima facie* entitled to compensation on account of the well... I am of opinion that the point in issue is one which should be decided by regular suit. For the purposes of the present suit it seems

(1) Financial Commissioner's Select Case No. 5 dated 5th June 1870.

(2) Rent Act Ruling No. 26 of 1876.

No. 44
1885.

to me that *prima facie* plaintiff is entitled to compensation for the well made by him, but that under the circumstances of the case what share of that compensation should be paid by each of the respective landlords before they can oust the plaintiff by notice is a point outside the present suit." In appeal to this Court it is contended that, as it is an admitted fact that the well does not stand upon the land in dispute the plaintiff is liable to ejectment without compensation. The question at issue is that of the right construction of the words "*in his occupation*," as used in section 22, Act XIX of 1868.

It was held by the Financial Commissioner in *Sant Kurmi versus Shah Iltifat Ahmad* (1), that "the equitable and legal reading of section 22 appears to be this—that, treating the holding (*jhote*) of a tenant as a whole, the tenant shall not be ejected from, or be subject to enhancement for, any portion thereof, until he has been compensated for any improvement made to the whole or any portion of it." But in *Chandka Singh versus Lal Chattarpal Singh* (2), it was held by this Court (Currie, J. C.) that by the words "on land in his occupation" it is meant that "the improvements must be situated on land held by the claimant as an ordinary cultivating tenant, so that if the landlord compensates the tenant for the improvements, he will be able to acquire the full interest therein"; and it is pointed out that where part of the land held by the person in question is held by him as *sir*, and part as an ordinary cultivating tenure, and improvement is made on the *sir* land, the presumption is that it was made for the benefit of the *sir* land. The present case appears to me to be analogous to that just stated. "It is" (Maxwell on the Interpretation of Statutes, 2nd edition, p. 96) "an established rule of construction that general words and phrases, however wide and comprehensive in their liberal sense, must be construed as strictly limited to the immediate objects of the Act, and as not altering the general principles of the law."

(1) Financial Commissioner's Select Case No. 5 of 1870.

(2) Rent Act Ruling No. 26 of 1876.

Applying this maxim to the case now before me, I remark that section 22 of Act XIX of 1868, was enacted in restraint of the rights of landlord as regards "tenant," a term by which, when not otherwise specified in the Act, tenants-at-will are alone intended. To enlarge the meaning therefore of the word "his" in section 22 of the Act, so as to make it include all kinds of occupation, and not only occupation *quod* tenant-at-will, would be to enlarge the scope of the law. I am of opinion that the words "*if any tenant make any improvements on the land in his occupation*" must be read as meaning "*if any tenant-at-will make any improvements on the land which is in his occupation as such tenant*" and that if a man holds some land in a *mohal* as a mere tenant-at-will, and as regards other land in the *mohal* occupied by him has right other than those of a mere tenant-at-will, and makes improvements in the latter portion of his holding, he cannot by virtue of such improvements claim the benefit of section 22, Act XIX of 1868, as regards the former portion of his holding.

No. 45.*

Before W. Duthoit, Esq., D. C. L.

ASHRAF KHAN (DEFENDANT), APPELLANT, *v.* AMIR KHAN
(PLAINTIFF), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 106—Suit for share of profits—Limitation.

Held, that a suit for a share of profits must be brought within three years from the time when the profits fall due, or at the end of the agricultural year (as defined in section 2, Act XVII of 1876) for which they are claimed. *Bhikhan Khan versus Ratan Kuar* (1) followed. *Ganeshi versus Laloo* (2) differed from.

The only question at issue in this appeal is one of limitation, the question being whether a suit instituted on the 22nd July 1885, for a share of the profits of 1289 Fasli is, or is not, within time.

(1) I. L. R., 1 All. 512. (2) Rent Act Ruling No. 21 of 1874.

* Referred to in *Must. Mahesha v. Kampta Pershad*—(R. A. R. 70 of 1893).

No. 45**1886.****The terms of the *Wajib-ul-urz* run thus:—**

"The custom of accounting is this ... the sharers shall divide among themselves, at the threshing-floor, in each season, the grain of the tenants which is payable in kind ; the accounting for cash rents shall take place once, in the month of Jeth." It is clear from the facts of this case that in the year 1289 Fasli there was no accounting between the parties; and this being so, the Courts below have followed *Ganeshi* versus *Laloo* (1) and have held the suit not to be time-barred. It is contended on behalf of the appellant that when the terms of the *Wajib-ul-urz* are so plain they ought to be followed, and that the principle enunciated in Rent Act Ruling No. 21, is erroneous.

It is with great reluctance that I decline to be bound by the authority of a decision of a former Judicial Commissioner, which has been published as a Select Case. But I am constrained in the case before me to decline to be so bound. Indeed I have little doubt that if my learned predecessor had been delivering judgment after the publication of the Full Bench Ruling of the Allahabad High Court in *Bhikhan Khan* versus *Ratan Kuar* (2) and of Act XVII of 1876, his judgment would have been different. Section 106 of Act XIX of 1868 provides that a suit for the recovery of arrears of profits must (except in an event which has not occurred here) be instituted within three years from the date on which the share of profits became due. In this case the share claimed is a share in cash rents and a share in kind rents. By the terms therefore of the administration paper the share of kind rents became due before the grain was removed from the threshing-floors, and there can have been no grain out on the floors in the middle of July ; and the cash rents were due for division in all Jeth, and Jeth 1289 Fasli ended on the 1st June 1882. Moreover the Oudh Land Revenue Act has, in the second section, defined the agricultural year as a year commencing on the first day of July and ending on the thirtieth day of June. I am of opinion therefore that the plaintiff's suit was time-barred.

(1) Rent Act Ruling No. 21 of 1874. (2) I. L. R. 1 All. 512.

No. 46.**Before W. Young, Esq., C. S.***No. 46****1886.**

AJUDHIA (PLAINTIFF), APPELLANT, *v.* MUSAMMAT ALARIKHI
(DEFENDANT), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 3—Kitkinadar (Sub-lessee) is a "tenant."

The parties in this case stand in the relation of *thekedar* (lessee) and *kitkinadar* (sub-lessee). A "tenant" under the Oudh Rent Act is one who, not being an under-proprietor, is liable to pay money, etc., on account of the use of land.

Held, that as the *kitkinadar* is one who is liable to pay money on account of the use of land he is therefore a tenant.

I entirely differ from the Lower Appellate Court on the preliminary point on which it has disposed of this case.

1886
6th August.

I consider that the matter at issue between the parties is one cognizable in the Rent Courts, and only in the Rent Courts.

This has been practically ruled already in previous decisions (*vide* Financial Commissioner's Circular No. 30 of 1870, p. 41, Unrepealed Circulars).

Also this Court's Judgment in *Fateh Bahadur* (Appellant) versus *Muhammad Askari* (Respondent), dated 29th June 1886.

The parties stand in the relation of *thekedar* (or lessee) and *kitkinadar* (or sub-lessee) and the point at issue comes simply to this. "Is such a *kitkinadar* a tenant?"

The answer is, a tenant under the Oudh Rent Act is one who (not being an under-proprietor) is liable to pay money, &c., on account of the use of land. A *kitkinadar* has so to pay money. Therefore he is a tenant.

The decision of the Court below is reversed.

No. 47.*Before W. Young, Esq., C. S.***No. 47****1886.**

SHEO DAYAL (PLAINTIFF), APPELLANT, *v.* MATHRA PARSHAD
(DEFENDANT), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 109—Suit by sharer for profits against heir of deceased lambardar, as such, not cognizable by Rent Courts.

A share-holder sued the defendant on the allegation that the monies in question were due from the defendant's father who had been *lambardar*

* Referred to in *Ram Sahai v. Chandi*—R. A. R. No. 74 of 1893.

No. 47
1888.

during the years for which profits were claimed, but who had died prior to this suit and was succeeded in the *lambardarship* by the defendant.

Held, that a Rent Court has no power to decide a question which is in reality a claim to realize a debt owed by a deceased person. The claim would lie against the heirs of the deceased, if at all, not against the defendant alone, nor in consequence of his being a successor to his father in the *lambardarship*.

I. L. R. 5 All. 438—*Ahmad-ud-din Khan v. Majlis Rai*, and Allahabad High Court Reports Vol. 2, p. 54, referred to.

1888
26th Jany.

This is an appeal from the decision of the Deputy Commissioner of Unao, dated 6th May 1887, affirming an order of Pandit Jai Narain, Extra Assistant Commissioner, dated 1st December 1886, dismissing a claim for profits of 1290-91-92 Fasli.

The plaintiff (appellant), a share-holder in the village Panhan, sued the defendant on the allegation that the monies in question were due from defendant's father who had been *lambardar* during the years above-mentioned, but who had died prior to the suit and was succeeded in the *lambardarship* by the defendant (respondent).

The Lower Courts have both held that the suit is cognizable, if at all, only in the Civil Courts.

On appeal to this Court it was urged that the procedure of the Civil Procedure Code is expressly ordered by section 109, Act XIX of 1868, to be followed in rent proceedings in Oudh save where such procedure is not inconsistent with the provisions of the Rent Code, and, consequently, that the law relating to substitution of parties laid down in section 368, Civil Procedure Code, would apply to a rent suit; and it was argued that the principle upon which in the present suit the plaintiff (appellant) seeks to make the defendant (respondent) responsible for the debt of his father, is precisely analogous to that upon which a Civil Court is empowered to substitute the legal representative of a deceased defendant upon the application of the plaintiff.

I do not think this argument to be valid.* Whatever power a Rent Court may have as to substitution of the name of the

legal representative of a deceased defendant, it seems to me clear that a Rent Court has no power to decide a question which is in reality a claim to realise debt owed by a deceased person. Such claim obviously is one for a Civil Court only. The claim moreover would lie against the heirs of the deceased, if at all, because they were such heirs and had got the estate of the deceased into their possession. It would not lie against the defendant alone, nor in consequence of his being a successor to his father in the *lambardarship*—for the powers and liabilities of a *lambardar*, as such, are personal to him—and do not descend to his successor in office as such.

Nos. 47 & 48
1888.

The appeal is dismissed with costs in all Courts. See I. L. R. All. 5, p. 438, Allahabad High Court Report, Vol. 2, p. 54.

No. 48.

Before W. Young, Esq., C. S.

GAYA MISB (DEFENDANT), APPELLANT, *v.* BHAIYA TRIBHUAN DAT
(PLAINTIFF), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 83, clause 4—Grounds for ejectment.

A landlord sought to eject his tenant under clause 4, section 83, Act XIX of 1868, on the ground that the tenant declined to pay enhanced rent.

Held, that to succeed under clause 4, section 83, Act XIX of 1868, the landlord must prove (1) either non-payment of arrears of rent or (2) breach of conditions of lease.

This ruling overrules the *obiter dictum* in Rent Act Ruling No. 18 and also the ruling on this point, (*viz.*, the grounds warranting "ejectment" under section 83, clause 4, Act XIX of 1868) in Rent Act Ruling No. 25.

In this case the plaintiff, a landlord, sued to eject defendant (appellant) under clause 4, section 83, Act XIX of 1868, on the ground that the tenant declined to pay as much rent (enhanced) as the landlord thought fit to demand.

1888
20th March.

Without going into the question as to whether the plaintiff proved his allegations, it is sufficient to remark that if

Nos. 48 & 49
1888.

he had done so he would not have been entitled to a decree under the law which he cites To succeed under clause 4, section 83, Act XIX of 1868, the landlord must prove, (1) either non-payment of arrears of rent or (2) breach of conditions of lease.

In the present case the plaintiff does not even allege that he could show the existence of either of these grounds of action. He was therefore clearly unable to prove the case he set up, and his claim ought to have been at once dismissed.

The judgments of both the Lower Courts are reversed and the plaintiff's suit is dismissed.

No. 49.

Before W. Young, Esq., C. S.

BAIJU AND ANOTHER (PLAINTIFFS), APPELLANTS, v. TRIBHUAN DAT
(DEFENDANT), RESPONDENT.

Oudh Rent Act (XIX of 1868), s. 5—"Proprietor" and "proprietary" refer to subordinate as well as to superior proprietors.

The claim of the plaintiffs, who styled themselves *Birtia zemindars*, was dismissed on the ground that they never held the *kabuliat* of the village and therefore do not fall under the purview of section 5, Act XIX of 1868.

Held, that the words "proprietor" and "proprietary" in section 5, Act XIX of 1868, refer to subordinate as well as to superior proprietors.

1888
13th Feby.

This is a claim under clause 6, section 83, Act XIX of 1868, to establish a right of occupancy.

The Lower Appellate Court has found that the claim of the plaintiffs must be dismissed and grounds its decision on the fact that plaintiffs do not themselves allege that they ever held the *kabuliat* of the village in question, and therefore do not (in the Court's opinion) fall under the purview of section 5, Act XIX of 1868.

I note that the plaintiffs did in their plaint style themselves *Birtia zemindars* as the Lower Appellate Court has itself remarked. The Lower Appellate Court goes on to say, "Now

Birt is a farm of under-proprietary right." That no doubt is correct, but the Lower Appellate Court does not state why it deduces therefrom the conclusion that the law (section 5, Act XIX, 1868) does not permit a right of occupancy to be decreed in such circumstances.

Nos. 49 & 50
1888.

No doubt Act XIX of 1868, defines the words "proprietor" and "proprietary" and expressly states that the word "proprietor" does not include an under-proprietor." But the Lower Appellate Court has omitted to notice that this definition (like all the definitions in section 3, Act XIX, 1868) is governed by a proviso. That proviso is "unless there be something repugnant in the subject or context." Now, in section 5 there is something clearly repugnant in the context to the assumption that "proprietor" in that section only means and includes "superior proprietor."

The words that are repugnant to such limitation of its meaning are very clear. They are these—"tenants who have lost all proprietary right *whether superior or subordinate*." Here if the word "proprietary" be interpreted to mean "superior proprietary" only, the subsequent words "whether superior or subordinate" becomes not only unmeaning but unintelligible and contradictory.

It is obvious therefore that in *this* section the words proprietor and proprietary refer to subordinate as well as to superior proprietors.

The decision of the Lower Appellate Court is therefore erroneous and must be set aside.

No. 50.

Before W. Young, Esq., C. S.

IN THE MATTER OF THE APPLICATION OF RAJA AMIR HASAN KHAN.

Suit for arrears of rent—Surety of tenant should not be impleaded in suit for.

This is a suit for arrears of rent due under a theka and plaintiff seeks to implead as co-defendants the representatives of the lessee's surety.

Nos. 50 & 51
1888.

Held, that it is improper to implead a surety, along with a tenant or lessee, defendant in a Rent suit.

Rent Act Ruling No. 24, cancelled.

1888
3rd Nov.

I agree with the Courts below that it is improper to implead a surety, along with a tenant or lessee, defendant in a Rent suit.

Rule discharged but without costs as the respondent gave no notice of a prior postponement to applicant's counsel.

The applicant is allowed a fortnight to file an amended plaint.

This ruling cancels the ruling as to impleading a surety in Rent suits laid down in Rent Act Ruling No. 24.

No. 51. *

Before W. Young, Esq., C. S.

GHURE AND ANOTHER (PLAINTIFFS), APPELLANTS, v. MATHURA PANDE (DEFENDANT), RESPONDENT.

Act XXII of 1886, s. 108, clause 4, provides generally for all suits brought by a landlord to eject a tenant.

Appellants sought, under clause 4, section 108, Act XXII of 1886, to eject a tenant upon whom notice of ejectment under Act XIX of 1868, had been served, and who had unsuccessfully contested it. The Lower Appellate Court held that such a suit for ejectment can only be brought under the provisions of section 62, Act XXII of 1886.

Held, that section 108, clause 4 of Act XXII of 1886, provides generally for all suits brought by a landlord to eject a tenant.

1888
20th Nov.

This was a suit under clause 4, section 108, Act XXII of 1886, to eject a tenant, upon whom notice of ejectment under Act XIX of 1868, had been served and who had unsuccessfully contested it.

There is no allegation here that the appellants had virtually re-admitted respondent to his tenancy by accepting rent from him subsequently to the notice of ejectment, on the contrary they declined to take the rent and respondent accordingly deposited

* Dissented from in *Mir Abbas Ali v. Amanat Bibi*—R. A. R. 61 of 1892.

it (he says, in Court). Under these circumstances can appellants eject respondent by a suit under the new Rent Act? (clause 4, section 108, Act XXII of 1886).

The Lower Appellate Court finds in the negative and holds that such a suit for ejectment can only be brought under the provisions of section 62, Act XXII of 1886.

I find no authority for this in the law itself. Section 108, clause 4 of Act XXII of 1886, provides generally for all suits brought by a landlord to eject a tenant, and the commencing words of that section show that no other Court but a Rent Court shall try such a suit. Here is a case where a landlord is clearly entitled to eject a tenant, and that because the tenant has been declared by a competent Court to be liable to such ejectment.

The Lower Appellate Court thinks that section 108, clause 4, should in short be read as if it ran "suits for the ejectment of a tenant under the provisions of section 62."

It is sufficient to observe that the law does not say so and that we have no right to import any such additional words into the law.

Moreover, it is to be noticed that the omission of such words was not accidental as the corresponding clause (section 83, clause 4) in the old law distinctly did limit the kinds of ejectment suits that could be brought by a landlord against a tenant to suits "for the ejectment of a tenant or for cancelling any lease on account of the non-payment of arrears of rent or on account of a breach of the conditions of a lease." The omission of any such limitation in the present law is therefore all the more significant.

Again, if we turn to section 62 of the present act we find that certain grounds of action for a suit to eject a tenant are therein set forth, but there is nothing to show that such list of grounds is exhaustive, and that no other grounds for ejecting a tenant may be urged by a landlord.

For these reasons I accept this appeal and reverse the judgment of the Lower Appellate Court.

No. 52

1889.

No. 52.

Before W. Young, Esq., C. S.

MAHARAJA JAGATJIT SINGH, OF KAPURTHALA, MINOR, THROUGH
HIS GUARDIAN KUAR HARNAM SINGH, (DEFENDANT), APPELLANT,
v. RUPAN MURAI (PLAINTIFF), RESPONDENT.

*Act XXII of 1886, s. 68—Non-acquirement by Thekadar of rights specified
in s. 67.*

Where a single plot on which a house had stood was given to a tenant on rent.

Held, (1) that it was not shewn that such plot was given otherwise than as a separate holding,—independent of the land previously held by the tenant—and that therefore there was no proof of alteration of area as a whole ; also,

Held, (2) that a *thekadar*, unless expressly authorised by the terms of the *theka* to alter the area and rent of tenants, is not competent to bind the landlord with a new implied contract with the tenant, for it is expressly declared in section 68 of Act XXII of 1886 that a *thekadar* does not acquire any of the rights mentioned in section 67, one of which is the right conferred by section 36.

I think this appeal must be decreed.

1889
13th May.

It seems that the lease-holder (*thekadar*) of the village allowed respondent to hold a plot of 5 biswas of land formerly occupied by the house of a tenant who had left the village, and the said lessee charged respondent Rs. 3 more rent for the said plot 1004. On these facts respondent resists the appellant who has served him with a notice of ejectment. Respondent pleads section 36, Act XXII, 1886, and urges that the area and rent of his holding having been altered he cannot now be ejected.

There is nothing to show that the area of the holding as a whole has been altered, and there is no proof that this 5 biswas plot was not given as an independent holding not connected with the holding previously in his possession as a tenant.

But apart from this consideration, I am not satisfied that the Law intended that a *thekadar* should have the power, by altering a tenant's area of holding thereby to bind the landlord with a new implied contract with the tenant. No doubt if the

terms of the *theka* expressly authorized the *thekadar* to alter the area and rent of the tenants, such delegation of his authority by the landlord would bind the latter. But there is nothing before me to prove that the terms of the *thekadar's* lease in this case gave him any such power, for the lease itself was not produced.

Nos. 52 & 53
1889.

In the absence of proof of such special authorization, I am of opinion that the presumption is against a *thekadar* possessing such power, for in the case of a *thekadar* it is expressly declared (section 68 of the Act) that he does not acquire any of the rights mentioned in section 67, one of which is the right conferred by section 36. If then a *thekadar* cannot himself acquire such right, the presumption is that he cannot give a tenant under him such right. The appeal is decreed.

Parties to bear their own costs.

No. 53.

Before W. Young, Esq., C. S.

MATADIN (DEFENDANT), APPELLANT, v. AJUDHIA (PLAINTIFF),
RESPONDENT.

Act XXII of 1886, s. 138—*Land-holder's rights against the third person made party to a suit can only be enforced by Civil Court.*

The respondent sued a tenant for rent, who pleading payment to a third party, the appellant was made a party to the suit and on acknowledging receipt of the rent a decree was given against him and the tenant was discharged from liability.

Held, that the decree on the Court's finding on the facts ought to have been passed against the tenant and that the collection by the appellant was a distinct attack on the respondent's title which the Rent Court had no jurisdiction to decide further than was required to prove whether the respondent's claim for rent against the tenant ought to be decreed or dismissed. *Madho Prasad versus Ambar and others* (1), and *Gobind Ram versus Narain Das* (2) followed :—

In this case a landlord sued a tenant for rent, and the latter, pleading payment to a third party, Matadin, appellant,

1889
20th May.

(1) I. L. R. 5, All. 503. (2) I. L. R. 9, All. 394.

Nos. 53 & 54
1889.

the said Matadin was under section 138, Act XXII, 1886, made a party to the suit. Matadin acknowledged receipt of payment, and the Court's finding that plaintiff had hitherto been in undisturbed rent-collecting possession of the land of which the rent is in dispute, gave a decree to the plaintiff against Matadin and discharged the tenant from liability.

The decision is wrong. The decree on the Court's finding on the facts ought to have passed against the tenant, but not against Matadin. There was no relation of landlord and tenant between plaintiff and Matadin. On the contrary the collection of the rent by Matadin was a distinct attack upon the plaintiff's title.

The Rent Court had no jurisdiction to decide such question of title further than was required to decide whether the plaintiff's claim for rent against the tenant ought to be decreed or dismissed.

A similar decision was arrived at by the Allahabad High Court in *Madho Prasad* versus *Ambar* (1), and *Gobind Ram* versus *Narain Das* (2,) where the nearly identical provisions of section 148, Act XII, 1881, were discussed.

Appeal accepted and orders of the Lower Courts reversed.

No. 54.

Before W. Young, Esq., C. S.

DEBI (DEFENDANT), APPELLANT, v. RAGHUBAR (PLAINTIFF),
RESPONDENT.

*Act XXII of 1886, s. 36, is applicable to a co-sharer holding, as tenant, land other than *str*.*

The parties are co-sharers in a village and respondent holds lands which by partition, enforced on 1st July 1886, have now been included in the new Patti of appellant who seeks to eject the respondent.

Held, that as respondent did not hold the land as *str* he must have held as a mere tenant, accountable for the rent to the body of Pattidars, and therefore is not excluded by section 67, Act XXII of 1886 from the statutory privileges of a tenant in respect of the land in suit.

(1) I. L. R., 5 All. 503. (2) I. L. R., 9 All. 394.

In this case the question is what was the position of plaintiff (respondent) in respect to certain lands now held by him in the new Patti of the appellant (defendant), which has been formed in a *batwara* (perfect partition), which was enforced between the Pattidars (among whom are plaintiff and defendant) on 1st July 1886 ?

Nos. 54 & 55

1889.

1889

20th May.

If respondent formerly held the land as *sir*, the statutory privilege of a tenant under section 36, Act XXII, 1886, would not apply thereto—see section 67, Act XXII, 1886.

But in this instance the land does not appear to have been held prior to partition as *sir*—or *quasi-sir*—by the plaintiff (respondent).

The *Wajib-ul-arz* of the village expressly says that there is no *sir*—this being so, the respondent must have held as a mere tenant accountable for the rent to the body of Pattidars.

Under these circumstances the plaintiff is not excluded by section 67 from the statutory privileges of a tenant in respect of the land in suit. The order of the Lower Appellate Court is right, and this appeal is dismissed with costs of all Courts.

No. 55.

Before W. Young, Esq., C. S.

JODHA (DEFENDANT), APPELLANT, *v.* SHEO PARSHAD (PLAINTIFF),
RESPONDENT.

Act XXII of 1886, s. 33—Fixing rent of occupancy tenant.

The defendant was held by the Commissioner, Lucknow Division, in his order, dated 27th August 1884, to be a tenant with right of occupancy, but no rent was then fixed, and a dispute as to its amount having arisen, the Commissioner in March 1888, decided that plaintiff was entitled to have rent fixed in pursuance with the provisions of section 33 of the Rent Act.

Held, that the Commissioner was right in deciding that where, as here, an occupancy tenant's rents have never been fixed and the parties dispute as to its amount, such amount can be fixed under s. 33, Act XXII of 1886.

I think that the Commissioner, the Hon'ble Mr. Maconaghey, is right, in deciding that where, as here, an occupancy tenant's rent has never been fixed and the parties dispute as to its

1889

4th July.

Nos. 55 & 56
1889-90.

amount, such amount can be fixed under section 33, Act XXII of 1886. The words of that section are not very clear on this point, but I think it may safely be inferred that, if the Legislature thought it right that tenants with occupancy right who were paying *some* rent, should in certain cases be liable to enhancement, *à fortiori* tenants with a right of occupancy paying nothing should be liable similarly.

On the merits, as to the actual sum fixed, I see no cause for interference.

No. 56.

Before W. Young, Esq., C. S.

**RAM LAL (PLAINTIFF), APPELLANT, v. BHAYA TRIBHUWAN DAT
 RAM (DEFENDANT), RESPONDENT.**

*Re-instatement of holder when notice of ejectment from land is finally
 cancelled—Code of Civil Procedure (XIV of 1882), s. 583.*

The appellant on his objection to notice of ejectment being dismissed was ejected from his holding. He appealed to the Judicial Commissioner, who decreed his appeal, and he then applied to the Rent Court to be put in possession of the land from which he had been ejected, but without success. The Lower Appellate Court held that the Rent Court was right in declining on the Judicial Commissioner's decree to direct re-possession to be given by way of execution.

Held, that the Rent Act has to be read along with the Civil Procedure Code, and section 583 fully empowers the Court, whose decision is reversed, to give relief by restitution or otherwise, and that as the mode of executing a decree upholding a notice of ejectment is by taking aid from the Deputy Commissioner, it follows that a similar course must be resorted to when the notice is finally cancelled.

1890
4th March.

This appeal must be decreed. I do not think that appellant ought to be relegated to a separate suit for re-possession of his land. It is the duty of the Rent Court to put appellant again in possession of his land by giving him *aid*, just as it would have been his duty to give aid to a proprietor wanting aid to eject a tenant who had unsuccessfully contested notice of ejectment.

The Rent Act has to be read along with the Civil Procedure Code, and section 583 fully empowers the Court, whose decision

No. 56 & 57
1890.

is reversed, to give relief by restitution or otherwise. As the somewhat anomalous mode of executing a decree upholding notice is by taking aid from the Deputy Commissioner, it, in my opinion, follows that a similar course must be resorted to when the notice is finally cancelled, but possession has changed hands during the course of the proceedings.

A separate suit of course lies against illegal dispossession, but would have to be brought under the Limitation Rules prescribed by the Rent Act, and furthermore there is no allegation here that possession was ever taken otherwise than under due course of law.

Appeal accepted. Order of both Lower Courts reversed and execution ordered as prayed with costs of all Courts.

No. 57.

Before W. R. Burkitt, Esq., C. S.

RAJA RUDRA PARTAB SAHI (DEFENDANT), APPELLANT, v. HANOMAN (PLAINTIFF), RESPONDENT.

Act XXII of 1886, ss. 4, 36, 37—Acquisition of "nautor" land—Alteration in rent or area.

A tenant of long standing who held some 61 bighas of land took up in 1295 Fasli "nautor" land of about 4 bighas and contested a notice of ejectment therefrom on the grounds (a) that he cannot be ejected from a portion of his holding and (b) that the area of his holding having been altered in 1295 Fasli he is entitled to the protection given by section 36 of the Oudh Rent Act.

Held, that the acquisition of "nautor" land in 1295 Fasli in no way "altered the area" of the existing "holding" of 61 bighas, or changed the rent of that holding. To decide otherwise would be to abrogate to a great extent the provisions of the third clause of section 4 of the Rent Act, provisions to which section 36 and 37 have by explanation II (section 37) been made expressly subject.

This is an appeal from a decision of the Commissioner of Rae Bareli affirming a decree of the Deputy Collector of Sultanpur cancelling a notice of ejectment served on the

1890
10th April.

No. 57
1890.

plaintiff (respondent) in respect of 3 bighas, 14 biswas of "Nautor" land in Mauza Harthwa.

The (plaintiff) respondent (who is an under-proprietor in an adjoining village) is a tenant in Mauza Harthwa, apparently of long standing, of some 61 bighas of land for which he pays a certain rent to the (defendant) appellant. Very recently, namely in the year 1295 Fasli (1887-1888), he took up some "Nautor" land to the extent of about 4 bighas. He seems to have held the latter for a very short time, as notice of ejectment was served on him in November 1888.

The notice served was only in respect of the "Nautor" area.

Plaintiff (respondent) now contests the notice on two grounds, namely (1) that he cannot be ejected from a portion of his holding, and (2) that the area of his holding having been altered in 1295 Fasli he is entitled to the protection given by section 36 of the Oudh Rent Act.

The question I have to decide is, are these pleas valid? I take up first the plea under section 36 of the Rent Act. Respondent's allegation is that his act in taking up the "Nautor" land amounts to an "alteration in the area of his holding." I cannot concur in that contention. In accordance with the first "explanation" to section 37, I am of opinion that the area of 61 bighas previously cultivated by (plaintiff) respondent, and which he still continues to occupy, is a "holding" as defined in that explanation. It forms the "subject of a separate engagement" and the acquisition of the "Nautor" area in 1295 Fasli in no way "altered the area" of the existing "holding" of 61 bighas, or changed the rent of that holding.

What happened in 1295 Fasli clearly was no more than that plaintiff while retaining his existing "holding" and adhering to his engagement in respect of it, took up some "Nautor" land and entered into a separate engagement to pay rupees 4 for the latter. I quite fail to see how such a transaction can in any way operate to "change the rent" or to "alter the area" of the previously existing "holding" of 61 bighas.

If I were to decide otherwise I have no hesitation in saying that the effect of such a decision would be to abrogate to a great extent the provisions of the third clause of section 4 of the Rent Act, provisions to which sections 36 and 37 have by Explanation II, (section 37) been expressly made subject. That clause expressly exempts from the other provisions of the Act all contracts as to "*Nautor*" land for a period of fourteen years, from the time when the land was first brought under cultivation. If then I were to hold that the taking into cultivation of "*Nautor*" land under a separate rent engagement amounted to a change in the rent or to an alteration in the area of the previously existing "holding" the result would be that a tenant who in any year took up some "*Nautor*" land would acquire not only the privilege under section 36 of retaining his existing "holding" for seven years more, but also would be entitled to retain the "*Nautor*" land for a similar period, irrespective of any contract he might have made respecting the latter with his landlord. I cannot believe that the Legislature intended any such result when enacting the third clause of section 4 of the Act.

I accordingly find that the notice served on respondent is valid as far as the second of the two pleas mentioned above is concerned, there being no grounds on which respondent can claim the protection given by section 36 of the Act.

As to the first plea I have decided above that this "*Nautor*" plot is held under an engagement separate from that under which respondent's old holding of 61 bighas, is held. There was therefore no necessity whatever for including the latter also in the notice of ejectment.

For the above reasons, I am of opinion that the decisions of the Commissioner and of the Deputy Collector cancelling the notice are erroneous and should be set aside.

Therefore, reversing the decrees of the Courts below, I direct that (plaintiff) respondent's suit do stand dismissed. (Plaintiff) respondent, must pay (defendant), appellant's costs of this appeal, and of the litigation in the two Lower Courts.

No. 58

1890.

No. 58.*

Before W. R. Burkitt, Esq., C. S.

HON'BLE MAHARAJA PARTAB NARAIN SINGH (PLAINTIFF),
APPELLANT, v. HAR PARSHAD PANDE (DEFENDANT), RESPONDENT.

Act XXII of 1886, s. 52—Lessees under decree of Settlement Court—Ejectment of—"Decree of Court."

Held, that lessees holding under titles created by a Settlement Court invested with powers of a Civil Court cannot be ejected by process under the Rent Act on default of payment of the rent due from them.

1890
17th Nov.

The proceedings on remand before the Lower Appellate Court in this and in the connected case, have put quite a new complexion on the question in dispute. Appellant has now filed the document under which respondents hold. That instrument is in the shape of a *kabuliat* at a rent fixed by the Settlement Officer for, and terminable only on the expiry of, the current Settlement, and it was executed in terms of a decree of a Settlement Court then invested with the powers of a Civil Court. The Commissioner is of opinion that with a lease of this kind Rent Courts have no power of interference.

Mr. Capper, Judicial Commissioner, in Rent Act Ruling No. 31 of May 31st, 1881, expressed strong doubts as to the jurisdiction of Rent Courts in respect of such leases, *i. e.*, as to the power of a Rent Court to eject the lessee. Suits for rent will of course lie in the Rent Courts. But the question of ejectment is different. The only section of the Rent Act in point is section 52 and in that section the only words applicable to the case of the respondents are the words "decree of Court," as admittedly they hold under a lease executed in compliance with the order of a Settlement Court invested with Civil powers. The word "Court" is defined in section 3 of the Rent Act to mean "a Judicial Officer presiding in a Court of "Revenue for the disposal of matters *under this Act*." The definition in Act XIX of 1868 was in similar words.

Clearly then the decree under which respondents hold is not a "decree of Court" within the meaning of section 52 of

* Dissented from in *Sabbu and others v. Sita Ram and others*, S. C. 222.

the Rent Act, as the Court by which the decree was passed was not sitting for the disposal of matters under the Rent Law. It follows therefore that a Rent Court has no jurisdiction to eject the respondents in the present case. A Rent Court being a Court of limited jurisdiction has no powers beyond those expressly given to it by the statute. It therein differs from a Civil Court which, by section 11 of the Civil Procedure Code, has power to take cognisance of *all* suits excepting such as are expressly exempted from its jurisdiction by special enactment. A Rent Court on the contrary can take cognisance only of such suits as it is empowered by the Rent Act to hear.

No. 58 & 59
1890-91.

From the tenor of his Judgment in the case cited above, it is obvious that, had it been necessary for him to have decided the point, Mr. Capper would have held that a Rent Court has no power to order ejectment of a lessee holding under a lease like those in the present case. For the reasons given above I have come to the same conclusion.

The landlord may no doubt sue in the Rent Court and obtain decrees for arrears of rent due by such lessees. But I hold he is not, on obtaining such decrees, entitled by virtue of them to proceed under section 52 of the Rent Act. He must, if he desire to oust the lessee, have recourse to the Civil Court, producing his decree as evidence of the lessee's breach of contract.

I accordingly dismiss this appeal and the connected appeal with costs.

No. 59.

Before W. R. Burkitt, Esq., C. S.

**SIRDARS HIRA SINGH AND GUR BAKHSH SINGH, MINORS, UNDER
THE GUARDIANSHIP OF MUSAMMAT INDAR KUNWAR (DEFENDANTS),
APPELLANTS, v. SIRDAR BHAGAIL SINGH (PLAINTIFF),
RESPONDENT.**

Act XXII of 1886, s. 108—Jurisdiction.

In a suit by a talukdar to recover from the defendants the revenue assessed on their portions of the taluka it was contended for the defendants that under their grand-father's Will they held their estates exempt from the payment of the Government Revenue.

No. 59

1891.

Held, that on the true construction of the Will defendants were liable to pay and that they should pay through the talukdar.

Held, also, that it is the duty of a Rent Court to decide every question raised in the suit an adjudication on which is necessary for the decision of the suit.

1891
30th March.

In discussing the questions raised in this case it is necessary first to take up the third plea set forth in the memorandum of appeal. The first and second pleas virtually depend on it.

That plea is to the effect that the minors (defendants), respondents, are full proprietors of Mauzah Makanwa under the Will of their grand-father Sirdar Sher Singh (wrongly called Hira Singh in the memo. of appeal), and that they are not liable to pay the revenue of that village.

The position then taken up on behalf of these minors is that they, in addition to being full proprietors of this village, are to enjoy all its in-comings while another party is to defray the public charges assessed on it.

The words of the Will referring to this village are as follows :—

"The whole Mauzah Makanwa, Hadbast No. 619, shall remain in possession of Sirdar Baz Singh (father of the minors, (defendants-appellants,) my younger son * * * * and all the profits (hasilat) of the said village Makanwa, *dakhli* and *kharji*, shall be enjoyed by Sirdar Baz Singh * * * * My successor Sirdar Suchet Singh, the Talukdar, will have no connection or meddling with Sirdar Baz Singh with respect to this village, should he do so it will be void and will not be enforced before the authorities for the time being, and the whole of the Government demand on account of the Taluka of Sirdar Suchet Singh, will be made from (*ta'alluk kiya jae*) the said Talukdar, my representative." The Will then further provides that the sons of Baz Singh will be entitled to receive the above said village "according to their father's share," and that the village is given to Baz Singh "generation after generation," thus clearly creating an absolute estate in Sirdar Baz Singh, and not a mere life estate. It is contended for appellants

that under the terms of this Will they are entitled to hold Mauzah Makanwa for their own benefit, without being responsible for the public burdens.

No. 50
1891.

The Deputy Collector before whom the suit first came states that he refrained from touching the question of title, and confined himself to a "pure revenue point of view." The meaning of these last few words is not very clear. The Deputy Collector was, I think, most distinctly wrong in refraining from entering into the question of title. It is the duty of a Rent Court to adjudicate on every issue raised before it as far as a decision on those issues or on any of them is necessary for the decision of the suit. Here it undoubtedly was necessary to decide whether under the Will the (defendants) appellants were liable to pay the revenue of Makanwa, or whether they were entitled to enjoy it "*Muaf*." The Deputy Collector did come to some extent to a decision on that point in the 3rd para. of his judgment, where he says "that it is not proved that defendants are assignees or "revenue-free holders, and their status is that of a subordinate "proprietor or pattidar."

He afterwards goes on to hold that defendants are estopped from pleading their non-liability to pay the revenue. In that matter I disagree with the Deputy Collector. I can see no estoppel whatever against appellants in the fact that their father paid the revenue down to the date of his death. The learned counsel who appeared for respondent did not attempt to support the finding of the Deputy Collector on this question of estoppel. But though in no way amounting to an estoppel, the conduct of appellants' father may usefully be taken into consideration, as showing the interpretation put on the Will by the parties interested soon after the testator's death. What occurred was that Baz Singh at first refused to pay, and was thereupon sued in a Rent Court for the revenue due for one-half of the year 1279 Fasli. The case came up on special appeal to this Court, and on being remanded for a local enquiry, Sirdar Baz Singh put in a confession of judgment, paid the amount sued for, and continued up to his death to pay the revenue

No. 59
1891.

assessed on Mauzah Makanwa. Baz Singh died, it is said, in 1885. His widow, guardian of his minor sons, has on their behalf refused to continue paying, and has raised the plea which her husband abandoned in 1872.

The burden of establishing such a claim of exemption from paying the public charges which ordinarily attaches to the owner of every estate in this province, lies on the appellants. That the interpretation of the Will accepted by their father was not that for which appellants now contend has already been shown. Then can any intention of creating a perpetual muafi in favor of Baz Singh be gathered from the wording of the Will ?

I think not. By the Will Sirdar Sher Singh first of all provides that his eldest son Suchet Singh shall, on the testator's decease, be his successor as Talukdar of the Bhanga Taluka. In another place he describes him as his (testator's) representative. The clauses of the Will extracted above, by which the testator bequeaths Mauzah Makanwa to Sirdar Baz Singh, do not contain one word which on any construction can be interpreted as granting a muafi estate. On the contrary the provision that the *whole* of the Government demand on account of the Taluka is to be made from Sirdar Suchet Singh as "Talukdar and representative" of the testator clearly means that Suchet Singh was the person who alone was to engage for and pay direct the Government revenue of the whole, and that proprietors of portions of the Taluka were not so to engage or pay *direct* to Government. They were to pay *through* the Talukdar, the representative of the testator. I cannot interpret those words as meaning that Suchet Singh was to pay the whole of the revenue of the whole Taluka out of his own pocket, and that his brothers were to pay nothing. The wording of the provision is that the "demand" of the public charges is to be made from Suchet for the *whole Taluka*. These words would be meaningless surplusage had the testator intended that Suchet should himself pay the whole public charges from the portion of the Taluka left in his possession. If it was intended that Baz Singh and his brother Tara Singh to whom other villages were bequeathed in similar language should hold muafi, it was useless

and unnecessary to provide that no "demand" should be made from *them*. But if it was the testator's intention that they should pay the revenue assessed on their villages, the provision that the "demand" for the entire revenue of the whole Taluka should be made from the testator's successor as Talukdar and representative becomes at once intelligible, and is a provision which the testator would naturally make. This seems to me the reasonable construction of the Will, and it is one which gives effect to all parts of it.

My feeling that this construction is right is strengthened by a consideration of figures showing the revenue and rental of the Bhanga Taluka. The total revenue payable on the whole Taluka is Rs. 5,400. It may, therefore, be assumed that the gross rental would be about Rs. 10,800. The Government revenue of the villages bequeathed to Baz Singh and Tara Singh, is about Rs. 2,000 (Baz Singh somewhat more than Rs. 900, Tara Singh somewhat more than Rs. 1,000). As they are in possession of the villages and make the collections, it may be assumed that they receive about Rs. 4,000. Appellants' contention is that they are entitled to retain that sum without making any contribution towards the revenue payable on the whole Taluka. The result then would be that Suchet Singh would collect Rs. 6,800 (Rs. 10,800—4,000) and out of that sum he would have to defray the Government demand Rs. 5,400, and so would have but Rs. 1,400 with which to discharge all incidental expenses and support his position as Talukdar and head of the house. I cannot believe that the testator had any such intention. Had he desired to put his eldest son, his successor and representative, into such a poor position he could easily have given expression to his wishes by the use of suitable language, such as the word "muafi" or the like. As no such words are used I must decline to read them into the Will. To do so would be to make a new Will for the testator. I hold that appellants and their father before them in accepting the estate bequeathed by the Will in question, took that estate subject to the ordinary burden of paying the Government charges assessed on it. I hold the position of appellants to be of the nature of a sub-proprietary

No. 59**1891.**

tenure, and that they are liable to pay the Government revenue through the Talukdar. It is perfectly immaterial whether they be called sub-proprietors or pattidars. Their liability is still the same.

The (plaintiff) respondent has admittedly paid to Government certain sums of revenue which I now hold appellants are liable to repay to him. Whether that money be called rent or be called revenue, a suit to recover it by the Talukdar, whether he be called Talukdar or Lambardar, is clearly a suit the cognizance of which has been reserved to a Rent Court by the opening words of section 108 of the Oudh Rent Act. The above remarks dispose of the 2nd, 3rd, 4th and 5th grounds taken in the memorandum of appeal.

As to the first ground it is clear that the amendment was forced on the (plaintiff) respondent. Considering the nature of the suit that amendment was perfectly unnecessary and immaterial, whether the money was sued for as "rent" or as "revenue," and whether appellants were described as under-proprietors or as pattidars, the aim of the suit and the grounds on which it was founded were unchanged all through. The suit undoubtedly under any shape is one cognizable by a Rent Court under section 108, and that being so it was not necessary that plaintiff should specify in his plaint the clause of that section which he might consider applicable to the facts of his plaint. In my opinion this appeal fails and must be dismissed.

The appeal is accordingly dismissed with costs, and the decree of the Lower Appellate Court is affirmed. As to costs, I further direct that (plaintiff) respondent's costs in this and in the Lower Appellate Court, be paid by Musammat Indar Kunwar, by whom as guardian and next friend of the minor appellants, the two appeals were wantonly and uselessly instituted. I direct that those costs are not to be recovered from the estate of the minor appellants, as Musammat Indar Kunwar took it on herself by these two appeals to resist a demand the justness of which her husband had for years admitted she must now suffer the consequences of her experiment.

No. 60.

No. 60

1891.

Before W. R. Burkitt, Esq., C. S.

RAM SAHAE (PLAINTIFF), APPELLANT, *v.* LAL SHEOPARTAP SINGH
(DEFENDANT), RESPONDENT.

Act XXII of 1886, s. 56—Notice of ejectment insufficiently stamped.

A talukdar served a notice of ejectment, to which an eight anna stamp was affixed, on a so-called *shikmi* tenant of *sir* land. On suit to contest the notice the Lower Court found that the tenant was an ordinary tenant and allowing the talukdar to make up the deficiency of Court-fee pronounced the notice good.

Held, that the notice was bad when served, and could not become a good notice by reason of something more being afterwards done by the talukdar.

I am unable to take that view of this case which has been adopted in the Lower Court. The talukdar (defendant) respondent, served a notice of ejectment on the (plaintiff) appellant. In that notice the plaintiff was described as a *shikmi* of *sir* land. The Court-fees paid on the notice were accordingly eight annas only. On suit by the tenant to contest the notice, it has been found by the Lower Court that the plaintiff is an ordinary tenant, and not a *shikmi* of *sir*. That is a finding of fact which I am bound to accept and act on in second appeal. The consequence of that finding is that the Court-fees paid on the notice are insufficient. The sum of Rs. 4-8 should have been paid. The Court below allowed defendant to make up the deficiency, and then pronounced the notice to be good. Plaintiff appeals.

1891
26th May.

I am unable to concur in the decision under appeal. On the finding of fact mentioned above it is clear that the notice when served on plaintiff was bad by reason of having only an eight annas Court-fees stamp affixed to it. One of the grounds mentioned in section 56 of the Oudh Rent Act as a ground on which the validity of a notice can be contested, is that the notice was insufficiently stamped. Defendant's reply to that is "I admit the notice was insufficiently stamped, and was therefore "a bad notice when served on plaintiff, but I now pay the

Nos. 60 & 61
1891-92.

"deficient Court-fees into Court, and contend that the bad "notice has been validated." I cannot admit that contention. That which the Court has to decide is whether the notice was good or bad when it was served on the tenant. If it was bad at *that* time it cannot, in my opinion, become a good notice at any future time by reason of something more having been done by the talukdar. Here the latter, when he served the notice on the tenant describing the latter as a *shikmi* of *sir* and paying only eight annas Court-fees, took the risk that the Court might decide against him as to the tenant's status. The Court having decided against him, I do not think it would be equitable to allow him now to turn round, and by paying the deficient Court-fees get that turned into a good notice which, up to then, was no more than waste paper.

Therefore, allowing this appeal, I reverse the decrees of the Courts below, and I give a decree with costs of all Courts in favor of (plaintiff) appellant, cancelling the notice of ejectment served on him.

No. 61.

Before W. R. Burkitt, Esq., C. S., Judicial Commissioner.

MIR ABBAS ALI (DEFENDANT), APPELLANT, *v.* AMANAT BIBI
 (PLAINTIFF), RESPONDENT.

Act XXII of 1886, ss. 62, 108 (4)—Grounds for ejectment of tenant during currency of tenancy.

In a suit by a land-holder to eject a tenant without rights of occupancy and not holding under a decree of Court or under a special agreement ;—*held* that such a suit is not maintainable unless founded on some of the grounds (a), (b), (c) or (d), set forth in section 62 of the Rent Act.

Rent Act Ruling No. 51 dissented from.

1892
9th April.

By the Court.—In this case I am unable to concur in the decision of the learned Commissioner. The suit has been brought by a land-holder for the purpose of ejecting a tenant who is said to be a tenant of the class described in section 53

of the Rent Act, *i. e.*, he is not an occupancy tenant, and he does not hold under any special agreement or decree of Court. Section 53 provides that such a tenant may be ejected by (1) notice (2) application or (3) suit. With the proceeding by "application" (section 61) I have no concern in this case.

On proceedings by *notice* the land-holder need not allege any reason for ejectment of the tenant. All he need say is that he desires no longer to retain him as tenant, as is alleged in the present case. But in order to restrain as far as may be such purely arbitrary ejectment the law, by section 55 and the following sections of the Rent Act, prescribes certain formalities under which the notice must be issued. It lays down what the contents of the notice shall be, and fixes the date by which it should be served and the date from which it is to have operative effect, and in certain cases requires the payment of a Court-fee.

For a *suit* none of the above safe-guards are provided under section 62 of the Act. That section (contrary to the rule in section 54) provides that a tenant "shall be liable to ejectment *during the currency of his tenancy*" on certain grounds set forth in clauses (a), (b), (c) and (d). It is now urged that those grounds are not exhaustive and that a suit for ejectment may be instituted on other than some of those four grounds and practically on *any* grounds. In that contention I cannot concur.

In my opinion the intention of the Act is that the ordinary procedure for ejectment of a tenant without rights should be by the issue of notice, which has the effect of putting an end to the tenancy on the 15th of May following. But if a landlord desires to oust a tenant *during the currency of his tenancy, i. e.* without waiting to have the tenancy determined at the time fixed in a notice issued under section 54 of the Act, the law allows him four grounds on which he may frame a suit for that purpose. To my mind the essential difference between sections 55 and 62 is that the former prescribes the method by which the tenancy can be determined and the tenant ejected on its

No. 61
1892.

expiry, while the latter allows a tenant to be ejected *during* the currency of his tenancy on certain specified grounds.

Section 62, while in fact affirming the general rule of law that a tenant is entitled to hold possession up to the expiry of his tenancy, provides four exceptions to that rule, and allows the land-holder to eject the tenant during the currency of his tenancy on proving that the latter has brought himself under some of those four exceptions. I fail to understand on what principle a Court of Justice can take it on itself to hold that there are a greater number of exceptions to the general rule mentioned above than those which the Legislature has thought fit to provide.

I have no hesitation in holding that clauses (a), (b), (c), and (d) of section 62 are exhaustive, and that a suit for the ejectment of a tenant during the currency of his tenancy cannot be entertained unless it allege some of those four grounds as its cause of action. I am unable to concur in the ruling laid down in Rent Act Ruling No. 51. The common law is that an ordinary tenant cannot be ejected before the expiry of his tenancy. The only way by which, under the Oudh Rent Act, the tenancy of such a tenant can be determined is by the service of a notice under section 54 of that Act. The tenancy thereupon comes to an end on the 15th of May following, and the tenant can be then ejected. But if the landlord desires to eject the tenant *at any other* time, than on the expiry of his tenancy determined as above, then he can do so only by alleging some of the grounds set forth in section 62.

This very case is an example of the injustice which might be done by an opposite view of the question. For here the (plaintiff) respondent simply alleging that she did not desire to retain (defendant) appellant any longer as her tenant, [she had been constantly unsuccessful in litigation against him,] and not alleging any of the four grounds set forth in section 62, instituted this suit in the month of April, and got a decree in July. In execution of that decree appellant might have been *at once* ejected notwithstanding that no notice had been served on him

in the previous November, and that he had had no opportunity of urging in support of his tenancy any of the grounds set forth in section 56 of the Act.

No. 61

1892.

If such a plaint as that in this case be held to be a good plaint it follows that sections 54—60 of the Rent Act are superfluous and ineffectual. I see no reason, however, for believing that the Legislature intended such an absurdity or that the true meaning of the Act is that for which respondent contends. I hold that the clear and obvious meaning of the ejectment provisions contained in sections 54—60 and 62 is that if a land-holder desirous of ejecting a tenant without rights can establish against the latter any of the four grounds set forth in clauses (a), (b), (c) and (d) of section 62 of the Act, he may proceed by suit at *any time* during the currency of the tenancy, but that failing those grounds he must wait to eject the tenant till such time as the latter's tenancy has determined under the operation of a notice served under section 55 of the Act.

It was also contended before me that section 108 (4) of the Rent Act gave an unrestricted right of suit. That is not so. That section does not *create* any right of suit. It simply removes certain classes of suits from the cognizance of a Civil Court and directs that they shall be heard by courts constituted under the Rent Act. It neither diminishes the rights of tenants nor enhances those of land-holders in the matter of ejectment. It does no more than provide that a suit for ejectment shall be heard by a Rent Court.

To the above I may add that my learned colleague, the Additional Judicial Commissioner, whom I have consulted respecting this case authorises me to say that he concurs in this judgment.

For the above reasons I am of opinion that, as (plaintiff) respondent has failed to show a good cause of action, the decree of the Lower Appellate Court cannot be supported. Therefore, setting aside the decrees of the two Lower Courts, I direct that the suit do stand dismissed with the costs of all three Courts.

No. 62

1892.

No. 62.*

Before W. R. Burkitt, Esq., C. S., Judicial Commissioner.

RAJA MUHAMMAD MUMTAZ ALI KHAN (PLAINTIFF), APPELLANT, v.

(1) HUBDAR SINGH, (2) BHAIRONDAT SINGH, (3) JHUMAN
DAT KUAR, AND (4) MUSAMMAT CHANDER MANI
(DEFENDANTS), RESPONDENTS.*Settlement Court decrees to Birtdars for haqq chaharam—Rights of Birtdars
and Talukdar—Act XXII of 1886, s. 132—Limitation.*

A settlement decree granting respondent's predecessor in title a birt of *haqq chaharam* in the nikasi of a village (with possession of the village) gives the birtdars nothing more than a right to retain *one-fourth* of the gross assets of the village, whatever they may be, from year to year. The Talukdar is not under the decree restricted to a right to receive only a fixed rent charge amounting to the Government jama plus fifty per cent. thereon. The birtdars are entitled only to what the Settlement decree gives them and to no more. Whatever is not given to them by that decree belongs to the Talukdar under his paramount title.

Held, that in this case the Talukdar was entitled to receive as rent from defendants three quarters of the gross nikasi whatever it might be from year to year ;

Held, also, that a suit instituted in January 1891 to recover arrears of rent of the year 1295 Fasli was not time-barred under section 132 of the Oudh Rent Act. The case (not published) of *Mehndi Ali Khan v. Chatar Lall Singh*, decided by Currie, J. C., in September 1877, considered and followed.

1892
13th June.

By the Court.—In this case the (plaintiff) appellant, Raja Mumtaz Ali Khan, Talukdar of Utraula, sued the (defendants) respondents for twelve years' arrears of rent of Mauzas Nathaipur Sajhaura, of which the defendants are "birtdars" in possession under a decree of a Settlement Court, dated September 10th, 1877. During the minority of the (plaintiff) appellant his estates were under the superintendence of the Court of Wards and were made over to him on his attaining majority in October 1886. The suit was originally instituted in the Court of the District Judge of Fyzabad. It was however held by this Court on appeal that such a suit was cognizable only in a Revenue Court, and the plaint was accordingly returned to (plaintiff) appellant to be presented to the proper

* Dissented from in *Jai Patter Singh v. Ram Rattan Lal* (1 Oudh Cas. 124).

Court. The plaintiff then went to the Court of the Deputy Commissioner of Gonda to whom the plaint was presented in January 1891. The suit was dismissed by the Deputy Commissioner in May 1891. Plaintiff now appeals to this Court. He accepts the finding of the Deputy Commissioner on the question of limitation as to the great bulk of his claim, and appeals only as to the rent due for the last three years 1295, 1296, and 1297 Fasli.

The facts of the case are few and simple. In the year 1877 one Thakurain Hansraj Kunwar, predecessor in title of the (defendants) respondents, sued in the Settlement Court claiming a sub-settlement of Nathaipur Sajhaura, villages which admittedly belong to appellant's Talukdari estate. The Thakurain's claim to a sub-settlement was rejected by the Extra Assistant Commissioner (then invested with the powers of a Civil Court of first instance) who heard the suit, but the Court allowed her a "birt" of 25 per cent. of the nikasi with possession of the villages in the following words "*decree haqq chaharam birt nikasi gaon men mai kabza gaon ba haqq muddai howe.*"

The principal question to be decided in this appeal is the construction to be put on the words I have just cited. For appellant it is contended that they give defendants a right to receive twenty-five per cent. of the gross rental of the village, they also retaining possession. For (defendants) respondents the contention is that those words restrict (plaintiff) appellant's rights in the villages to receiving payment of the Government jama assessed on them plus fifty per cent. This is the view taken by the Deputy Commissioner, though I notice that by a clerical error in his judgment he has put the rent at "the amount of the Government demand plus *one-fourth* of the said Government demand." He evidently means *one-half*, as he supports defendants' contention that all they have to pay to appellant is three-fourths of the gross rental (nikasi) calculated at twice the Government demand.

(Defendants) respondents say they are entitled to assume that the Government demand will always represent *one-half* of the gross rental (irrespective of actual facts) and that, taking the

No. 82

1892.

gross rental so calculated to be the "nikasi" mentioned in the decree of September 10th, 1877, they are not bound to pay appellant more than three quarters of that nikasi. If for instance the actual gross rental collections amounted to (say) Rs. 4,000 and the jama were (say) Rs. 1,500, defendants claim that in such a case the gross rental should not be taken to be more than Rs. 3,000, and that they would not be liable to pay more than Rs. 2,250 to appellant. In this case then the "*haqq chaharam birt nikasi gaon men*" would amount to no less than Rs. 1,750 out of Rs. 4,000.

I am unable to concur in the construction which the Deputy Commissioner puts on the decree of September 10th, 1877. It seems to me that he has looked at the decree from a wrong point of view. As these villages belong to appellant's Talukdari estate there can be no doubt that, under Act I of 1869, and the letters of the Government of India which form the Appendix to that Act, the appellant acquired in them a complete, absolute, heritable and transferable estate, subject only to such rights as might be established by under-proprietors and the like. Appellant's title therefore in no way depends on the decree of September 10th, 1877. With respondents it is different. That decree is *their* title deed. They are entitled to whatever it gives them and to no more. All that is not expressly given by the decree to them belongs to appellant under his paramount title as Talukdar. The decree therefore should be looked at to ascertain what are the benefits it conferred on respondents' predecessor in title, *i. e.*, to what extent did it impair appellant's proprietary rights? The rights declared and defined by that decree are those of the present respondents' predecessor in title and not those of the Talukdar. Defendants' contention, in which they are supported by the Deputy Commissioner, is that the decree gives (plaintiff) appellant a right to receive the Government jama plus 50 per cent. thereon. That contention is, I think, unsound. Construing the decree according to its plain grammatical meaning I cannot interpret it as operating to do more than give defendants a right to retain one-fourth of the gross rental.

The Deputy Commissioner finds that by some "universal practice" the nikasi was 'understood' to mean double the Government demand. I really fail to see how an understanding of this kind is material, or how the appellant or this Court can be bound by the manner in which revenue officials were in the habit of construing decrees of a Civil Court. And as to the four instances mentioned by the Deputy Commissioner I notice that one proceeded on consent, and that all four relate to the estate of appellant, who was a minor at the time when the proceedings on which the Deputy Commissioner relies took place. But the very thing of which (plaintiff) appellant complains in this suit is that the Court of Wards during his minority improperly accepted defendants' contention as to the amount of rent payable by them. No doubt at the time when the decree of September 10th, 1877, was passed, *i. e.*, during settlement operations, it was a convenient rule of thumb to assume that the jama was half the nikasi, as the new Government demand was supposed to have been assessed on half assets. But such a rule as that, though found useful for purposes of ready calculation in the revenue offices, cannot be accepted as a canon of construction by which Courts of law are to be bound when judicially construing a decree. It is a rule which if accepted by a Court of Justice would prevent the Talukdar, the absolute owner, from reaping any advantage, from increased cultivation or other improvements during the term of settlement, in the case of a village which happened to be in the hands of a birtdar entitled to a share in the gross rental. I decline to be bound by such a rule, and here in this case as I find the decree gave defendants' predecessor in title one-fourth of the nikasi in addition to the possession of the village, I hold that defendants are entitled to no more. I am of opinion that they are not entitled to say to appellant "the decree no doubt gives us only one-fourth of the nikasi, but nevertheless we will pay you a fixed rent charge of no more than the Government jama plus fifty per cent. and will retain for ourselves the remainder of the collections, even though much more than one-fourth of the nikasi may thus be left with us."

In the opinion I have expressed above I am supported by a considered judgment of one of my predecessors, Mr. Charles Currie, whose opinion in a matter of this kind deserves to be treated with the greatest respect and deference. In the case of *Mehndi Ali Khan versus Chutar Lal Singh* heard by him on appeal in

No. 62

1882.

this Court on September 11th, 1877, (just one day after the date of the decree now under consideration) Mr. Currie wrote as follows:—"The point for determination in this appeal is "whether the term 'nikasi' in a decree of a Settlement Court "determining the rights of a birtiya means the nikasi as "estimated by the Settlement Officer, that is double the Govern- "ment jama, or the kacha nikasi varying each year. The Court "of First Instance adopts the latter, but the Deputy Commis- "sioner the former." Then after setting forth the grounds on which the Deputy Commissioner had come to that conclusion, Mr. Currie proceeds:—"I have also had a considerable number "of birt cases from the Gonda district, and in not one of these "has the principle been distinctly stated that the measure of "the birtiya's rights is to be based on the rental assumed by "the Settlement Officer for assessment purposes; for had this "been the case I should not have accorded it my sanction. I "have always understood settlement decrees in the sense in "which the Assistant Commissioner has read the one in this "case, and the interpretation is correct and must be followed. "A birtiya entitled to a fourth or to a tenth of the gross rental "of a village must take his share according to the rental for "the year."

When this judgment was brought to the notice of the Deputy Commissioner in this case he ought to have held it to be binding on him, as being the decision of the highest tribunal in this province on the question he was considering. He is mistaken in supposing that Mr. Currie's judgment was "overruled" by a subsequent Judicial Commissioner. I have sent for the record of the case mentioned by the Deputy Commissioner (*Salik Ram versus Nirhu Lal*) in which Mr. Currie's judgment was cited, and I find that all that Mr. Young, J. C., said was that that judgment was "not applicable" to the facts of the case in which it was cited. He did not express the slightest disapprobation of or dissent from Mr. Currie's ruling.

For the above reasons I am of opinion that (plaintiff) appellatant is entitled to receive from the respondents as rent

(they being in possession of the villages), three quarters of the gross rental of Nathaipur Sajhaura, whatever it may be from year to year, and that his rights are not restricted to a mere fixed rent charge. The Deputy Commissioner's decision to the contrary is wrong and must be overruled.

As to limitation, I am of opinion that appellant is entitled to a decree for the rent calculated as above for the years 1295, 1296, and 1297 Fasli. The last day of the month of Jeyth in the year 1295 Fasli was June 23rd, 1888. It therefore follows that, as this suit was instituted in January 1891, it is not, under section 132 of the Rent Act, barred as to the claim for the rent of 1295 Fasli.

An objection was raised in this Court as to the sufficiency of the stamp on the plaint. That objection I overruled as I held that defendants not having taken it in the Court below were too late now and could not be heard on it in this Court.

Accordingly I allow this appeal and set aside the decree of the Lower Court dismissing plaintiff's suit. I direct that respondents pay (plaintiff's) appellant's costs of this appeal in *any* case. And as the suit was dismissed on a preliminary point, and as the decision of the Court below on that point, has been reversed, I remand the suit to the Deputy Commissioner of Gonda for disposal on the merits, under section 562 of the Civil Procedure Code. In so deciding the suit I direct that the Deputy Commissioner shall try the following issues:—

1. What was the gross rental (nikasi of Nathaipur Sajhaura during the years 1295 Fasli, 1296 Fasli, 1297 Fasli?

2. How much have the (defendants) respondents paid to the (plaintiff) appellant on account of the rent due from them for those three years?

3. How much, if anything, is (plaintiff) appellant entitled to receive from respondents?

The finding on the third issue should be arrived at by deducting the amount found paid under issue No. 2 from three quarters of the gross rental ascertained under the

Nos. 62 & 63
1892.

first issue. The Deputy Commissioner will then give a decree in accordance with his finding on the third issue, making at the same time an order as to the costs in his Court of the former and of the remand hearing, and embodying in his decree the order given above as to the costs incurred in this Court.

No. 63.*

*Before W. R. Burkitt, Esq., C. S., Judicial Commissioner, Oudh,
M. S. Howell, Esq., L. L. D., C. I. E., C. S., Additional Judicial
Commissioner, Oudh.*

(1) BABU UDRES SINGH, (2) BABU UGARSEN SINGH (DECREE-HOLDERS), APPLICANTS, v. (1) RAM BHAROS, (2) NIRMALL SINGH (OPPOSITE-PARTY).

Sale of under-proprietary tenure in execution of rent decree—Right of pre-emption under s. 155 of Act XXII of 1886—Judicial Commissioner's jurisdiction to revise, under s. 622, Civil Procedure Code, an order passed by Deputy Commissioner purporting to cancel the Sale.

Two days after a sale, held on the 20th September, 1890, in execution of decrees for rent, the respondents jointly petitioned the Sale-Officer, praying that the sale to the applicants might not be confirmed, on the grounds that each of the petitioners had bid higher than the applicants, and that one of the petitioners had made a claim to pre-empt. This petition having been dismissed by the Sale-Officer on the 11th October 1890, and the result of the sale having been reported by him to the Court executing the decrees, that Court, on the 11th November, 1890, confirmed the sale to the applicants. The respondents having on the same date, the 14th November 1890, presented an appeal to the Deputy Commissioner against the Sale-Officer's order of the 11th October 1890, the Deputy Commissioner gave time to one of the respondents to pay the amount for the recovery of which the sale had been held, and, on his making such payment, passed an order purporting to cancel the sale. Held, that no appeal lay to the Deputy Commissioner against the Sale-Officer's order of the 11th October 1890, that the Deputy Commissioner's order was wholly without jurisdiction, and that the Judicial Commissioner's Court had power to revise it under section 622, Civil Procedure Code.

Raja Mahesh Narain Singh versus Kishanund Mir and Raghobar Dayal Singh (1), Tasuduk Ali versus Makud Ali and others (2), Anrit Mir

* Referred to in *Maheshur v. Bhik Chand*, R. A. R. 63 of 1893.

(1) 9 M. I. A. 324, at p. 341.

(2) 6 N.-W. P. H. C. Rep. 272.

versus *Gurda Pardan* (3), *Munir-ud-din Khan and another*, versus *Abdul Rahim Khan* (4), *Bisheshar Kunwar and others*, versus *Hari Singh and others* (5), *Sarnam Tewari and another*, versus *Sakina Bibi* (6), *Raghunath Das* versus *Raj Kumar* (7), *Kishna Ram* versus *Hingu Lal and others* (8), *Tota Ram and another*, versus *Isher Das and others* (9) referred to. *Jwala Prasad* versus *Salig Ram* (10) distinguished.

No. 63

1892.

Howell, A. J. C.—This is an application for revision of an order made on the 10th February 1891 by the Deputy Commissioner of Fyzabad, purporting to cancel a sale held on the 20th September 1890 by Pandit Baldeo Parshad, Deputy Collector.

1892
22nd July.

The applicants Babu Udres Singh and Babu Ugersen Singh, who are Talukdars of Maopur Dhaurera in the Fyzabad District, held two decrees passed in their favor by Munshi Mahadeo Prasad, Assistant Collector of the 1st Class, on the 31st March 1885, against Kalka Prasad and others, under-proprietors, for Rs. 2,858, and Rs. 2,344-4 respectively on account of arrears of rent. The decree-holders on 26th April 1887 applied for execution of these decrees, praying that the judgment-debtors' under-proprietary holding in Mauza Rachpalpur might be sold. This application having been granted, and the sale sanctioned in the manner required by law, Munshi Mahadeo Prasad, the Court executing the decrees, made an order on the 14th September 1889, under section 135, Act XXII 1886, read with section 286, Civil Procedure Code, appointing the Deputy Commissioner to conduct the sale, which was fixed for the 20th September 1889; and this duty seems to have been delegated by the Deputy Commissioner to Pandit Baldeo Prasad. After repeated adjournments made by the Deputy Commissioner, apparently without the leave of the Court, on the applications of the judgment-debtors accompanied by payments on account, the sale was eventually held on the 20th September 1890 by Pandit Baldeo Prasad, who had on the 16th September 1890 been again appointed to conduct the sale by Munshi Ashfak

(3) 7 N.-W. P. H. C. Rep. 183.

(4) I. L. R. 3 All. 674.

(5) I. L. R. 5 All. 42.

(6) I. L. R. 3 All. 417.

(7) I. L. R. 7 All. 876, F. B.

(8) I. L. R. 4 All. 237.

(9) I. L. R. 9 All. 445.

(10) I. L. R. 13 All. 557.

No. 63

1892.

Husain, the Court executing the decrees, in succession to Munshi Mahadeo Prasad. At this sale the applicants who under section 294, Civil Procedure Code, had received the permission of that Court to purchase the property, made a bid of Rs. 1,620 for it. The first respondent, Ram Bharos, son of a judgment-debtor, then bid Rs. 1,625. On the representation of the applicants who urged that this bid was not a *bond fide* offer, but a mere trick to procure a postponement of the sale, Pandit Baldeo Prasad called upon Ram Bharos to show that he was prepared to pay the deposit of 25 per cent. required by section 306, Civil Procedure Code. This proceeding of the Sale-Officer was quite correct, according to the ruling of their Lordships of the Privy Council in *Rajah Muhesh Narain Singh v. Kishanund Misr and Rughubur Dyal Singh*, (1) where their Lordships say "It was urged that a production of the deposit ought not "to have been insisted on before the estate had been knocked "down, and that the effect of the proceeding was to deter "bidders and so diminish the amount for which the estate was "sold. Certainly the payment of the deposit could not be "required before the acceptance of the bidding, and the knock- "ing down of the estate; but the Collector was bound, in their "Lordships' opinion, to satisfy himself reasonably that these "persons were, what they professed to be, real bidders, and "the course which he took for that purpose was perfectly "justifiable; and so it was held in the Courts below—their "Lordships think quite correctly: they see not the least reason "for believing that it was calculated to deter persons really "wishing to buy from offering their biddings, or in any way to "damp the sale." Ram Bharos then tendered a fixed deposit receipt granted by the Oudh Commercial Bank, for what amount is nowhere stated, in the name of some stranger. The Sale-Officer rightly refused to accept this document as evidence of Ram Bharos' ability to pay the required deposit if the tenure should be knocked down to him; and after waiting till 4-30 p. m. in the vain expectation that Ram Bharos might be able to raise the money, he knocked the property down to the applicants, no higher bid than theirs having been made.

(1) 9 M. L. A. 324, at p. 341.

The second respondent, Nirmall Singh, son of another judgment-debtor, then came forward with a petition claiming to take the land by pre-emption at the sum at which it had been knocked down to the applicants, namely Rs. 1,620. This claimant, however, who was not a co-sharer in the tenure, nor a superior proprietor of it, had no right of pre-emption under section 155, Act XXII, 1886; nor was he prepared to pay the deposit of 25 per cent. as required by the last paragraph of that section read with section 306, Civil Procedure Code: and these two defects were fatal to his claim. On the 22nd September 1890 the two respondents joined in a petition to the Sale-Officer, alleging that the tenure was worth more than Rs. 2,000, that Ram Bharos had bid Rs. 1,625 and Nirmal Singh Rs. 1,630, that each of them had begun to make arrangements for raising the sum required for the payment of the deposit of 25 per cent. on the amount of his bid when the tenure was knocked down to the applicants for Rs. 1,620, and that a claim to pre-empt had then been made by Nirmall Singh; and praying that the sale to the applicants might not be confirmed. This petition was obviously presented in the interests of the judgment-debtors, with the object of hindering the execution of the decree by frustrating the sale, and not in the interests of the ostensible petitioners or either of them. For, the interests of the petitioners being antagonistic, since each of them claimed to purchase the tenure as the highest bidder, while Nirmall Singh added an alternative claim as pre-emptor, if their object had really been to press their own claims, it is clear that they would have presented separate petitions. Moreover it did not lie in the mouths of the petitioners, who claimed to purchase the property for Rs. 1,620, Rs. 1,625, or Rs. 1,630, as the case might be, to object that it was worth more than Rs. 2,000, though such an objection might well proceed from the judgment-debtors. I must not be understood, however, as meaning that this objection had any force in it. The tenure, which was assessed with revenue to the amount of Rs. 150 a year, was sold subject to an incumbrance of Rs. 400; so that the full price payable by the applicants came to Rs. 2,020 or $13\frac{1}{5}$ years purchase of the revenue, a price that cannot be considered

No. 681890.

inadequate. Even if the petition had been really intended to press the respondents' claims to purchase, there was nothing in it. The allegation that Nirmall Singh had bid Rs. 1,630 was false; and the petitioners admitted that they had not been prepared with the sums required for immediate payment in order to enable Ram Bhares to be recorded as purchaser of the tenure for Rs. 1,625, or Nirmall Singh as pre-emptor at Rs. 1,620. On these grounds the petition was very properly dismissed by the Sale-Officer on the 11th October 1890.

The result of the sale having been reported to the Court executing the decrees, which was then presided over by Munshi Ashfak Husain, and no application to set aside the sale having been made to that Court under section 311, Civil Procedure Code, by the decree-holders or by the judgment-debtors, that Court, on the 25th October 1890, confirmed the sale, as it was bound by law (section 312) to do; and on the 14th November 1890, granted a sale-certificate to the applicants, in whom the title to the tenure thereupon vested from the 25th October 1890.

The respondents presented an appeal to the Deputy Commissioner against the Sale-Officer's order of the 11th October 1890, dismissing the objections taken in their petition of the 22nd September 1890, and refusing to set aside the sale. Now, in the first place, no appeal lay to the Deputy Commissioner or any other authority from Pandit Baldeo Prasad's order of the 11th October 1890, which, though in terms an order refusing to set aside the sale, was, in contemplation of law, simply an order refusing to amend his record of the sale-proceedings by inserting the name of either respondent, instead of the names of the applicants, as the person declared to be the purchaser of the tenure. For Pandit Baldeo Prasad, as Sale-Officer had no jurisdiction to set aside the sale, that being a matter for the Court executing the decrees. An appeal no doubt lay under section 588, clause 16, Civil Procedure Code, from Munshi Ashfak Husain's order of the 25th October 1890, confirming the sale; and, if preferred by the judgment-debtors, might, I think for reasons given below, have been heard and decided by the

Deputy Commissioner under section 115, clause 1, Act XXII, 1886, as that Act then stood before its amendment by Act XX, 1890. But the respondents, who were neither the decree-holders, nor the persons whose immoveable property had been sold, could neither apply under section 311 to the Court executing the decree to set aside the sale, nor appeal under section 588, clause 16, against the order confirming the sale. Nor did they in fact make such an application, or prefer such an appeal. On the contrary they made an application to the Sale-Officer, and then appealed against his order. Either of them might have moved the Court executing the decree to declare him the purchaser and confirm the sale to him, as the highest bidder or the pre-emptor, as the case might be; and in the event of failure, there would have been a remedy by regular suit, not by appeal: *Tasuduk Ali versus Muksud Ali and others* (1); *Amrit Misser versus Gurda Pardan* (2); *Munir-ud-din Khan and another versus Abdul Rahim Khan* (3); *Bisheshar Kuar and others versus Hari Singh and others* (4).

But the law gave the respondents no right of appeal from the Sale-Officer's order, which was not passed by Pandit Baldeo Prasad in the capacity of an Assistant Collector of the 1st or 2nd class, as the Deputy Commissioner seems to have imagined; but in the capacity of ministerial officer of the Court executing the decree, under that Court's appointment made under section 135, Act XXII, 1886 and section 286, Civil Procedure Code. And, in the second place, if an appeal had lain under section 115, clause 1, Act XXII, 1886, from the order as an order of an Assistant Collector of the 1st or 2nd class, the appeal preferred by the respondents would have been barred by limitation. This appeal is stated in the certified copy of the Deputy Commissioner's order to have been presented on the 14th December 1890; but the applicants' learned Counsel Mr. DeGruyther, concedes that it was really presented on the 14th November, as appears probable from the wording of the order endorsed on it "Let it be produced on the 20th November 1890 with the

(1) 6 N.-W. P. H. C. Rep. 272. (2) 7 N.-W. P. H. C. Rep. 183.

(3) I. L. R. 3 All. 674.

(4) I. L. R. 5 All. 42.

No. 63
1892.

"record. Dated, 14th December 1890." If the earlier date be taken however, the appeal was presented on the thirty-fourth day from the 11th October 1890, the date of the order appealed against; and, the time requisite for obtaining a copy of that order being only three days, the appeal was presented one day after the expiry of the thirty days allowed by section 118, Act XXII, 1886. On these grounds, then, the want of jurisdiction and the bar of limitation, this appeal ought to have been summarily dismissed. On the merits too it ought to have failed, for the reasons before given, that neither Ram Bharos nor Nirmall had been prepared to pay the immediate deposit required by law; and that Nirmall, not being a co-sharer or a proprietor, had no right of pre-emption. The Deputy Commissioner, however, ruled as follows :—

"The Lower Court should have accepted the deposit receipt of the Bank until the cash was paid. The law gives a wide discretion to Revenue Officers, who should take any opportunity of saving estates from sale, instead of allowing the decree-holders to profit by the omission of the judgment-debtor to comply with unimportant formalities."

This ruling betrays a fundamental misconception of the position of a person appointed by a Court executing a decree to conduct an execution sale. Such a person, whether he be a Revenue Officer or not, acts merely as the ministerial officer of the Court which appointed him; and, even if he be the Deputy Commissioner himself, has no discretion whatever beyond what may be expressly allowed to an officer conducting a sale by the strict terms of the Civil Procedure Code. In this case the Sale-Officer was bound to reject the Oudh Commercial Bank's fixed deposit receipt which not only was not legal tender, but stood in a stranger's name, and was not transferable, nor payable on demand even at a discount, as matter of right. The Deputy Commissioner's notion that, even with the benevolent object of saving an estate from sale, the Sale-Officer had a discretion, in his capacity of Revenue-Officer to dispense with the immediate payment required by section 306, Civil Procedure Code, is a mischievous fallacy. For some mysterious reason, however, the Deputy

Commissioner did not proceed to give effect to his ruling. On his view of the law he ought to have declared Ram Bharos to be the purchaser. This, it is true, was not the relief sought in the memorandum of appeal, which prayed that the Sale-Officer's order of the 11th October 1890 might be reversed, and Nirmall's claim to pre-empt be allowed. But the Deputy Commissioner, apparently acting in the exercise of the wide discretion, which he erroneously conceived to be vested by law in him as a Revenue Officer, thought fit neither to declare Ram Bharos to be the purchaser; nor to allow Nirmall's claim to pre-empt; and, carrying out his principle of taking "any opportunity of saving estates from sale," he allowed Ram Bharos, who was not one of the judgment-debtors, three days to pay up the amount for the recovery of which the sale had been held, namely Rs. 661; and, the money having been brought by Ram Bharos on the third day, passed an order cancelling, or purporting to cancel, the sale, an order which Ram Bharos and Nirmall not only had not asked for, but, from the nature of their claims, could not ask for. That this order was accepted by the respondents as a satisfactory settlement of their appeal, which prayed for a relief totally inconsistent with it, is a striking proof that they were really acting not on their own behalf, but on behalf of the judgment-debtors. The success of this impudent conspiracy to frustrate the sale can only be attributed to the Deputy Commissioner's unfortunate misconceptions as to the extent of the discretion entrusted by law to a Revenue Officer appointed to conduct an execution-sale, and to a Deputy Commissioner determining an appeal.

The applicants appealed to this Court against the Deputy Commissioner's order; but their memorandum of appeal was returned to them on the 5th May 1891 by the present learned Judicial Commissioner on the ground that no appeal from that order lay to this Court. They then presented this application for revision, which came before me. Though I was of opinion, as, for the reasons above shewn, I still am, that the Deputy Commissioner's order was quite indefensible and ought to be reversed, I felt considerable doubts as to whether this Court had power to revise the order, and therefore I referred the

No. 63

1892.

application to the Bench. Having now enjoyed the advantage of hearing the question argued by Mr. DeGruyther for the applicants and by Babu Lachman Das for the respondents, I am satisfied that this Court has power to revise the order complained of. The question must be decided according to the law as it stood on the 26th April 1887, when the application for execution was presented, *i. e.*, according to Act XXII, 1886, before its amendment by Act XX, 1890, and to Act XIV, 1882, before its amendment by Act VII, 1888. Now under section 135, Act XXII, 1886, read with section 622 Civil Procedure Code, the Judicial Commissioner, as the High Court of the Province, had, and constantly exercised, revisional jurisdiction over the four inferior grades of Revenue Courts constituted by section 109 of Act XXII, 1886. The word "case" in section 622 Civil Procedure Code, as is plain from the wording of the section and from the authorities (*Sarnam Tewari and another versus Sakina Bibi* (1), and *Raghunath Das versus Raj Kumar* (2)) cited by Mr. DeGruyther, is wide enough to include the appeal decided by the Deputy Commissioner, notwithstanding that he had no jurisdiction to entertain it. This case too was a case in which no appeal lay to the High Court. The Sale-Officer's order of the 11th October, 1890, was in terms an order refusing to set aside a sale, since it ended with these words, "I dismiss the second objection also, and decline to set aside the sale, as desired by the objectors."

The Deputy Commissioner, seeing that it was on the face of it, an order by an Assistant Collector of the 1st or 2nd class refusing to set aside a sale, seems to have assumed that it was appealable under section 588, clause 16, Civil Procedure Code; and that the appeal from it lay to his Court under section 115, clause (1), Act XXII, 1886. On the first point he was no doubt wrong, because the order was not an order under section 312, Civil Procedure Code, since it was not made by the Court executing the decree. On the second point I think that if the order had been appealable under section 588, clause 16, Civil Procedure Code, he would have been right, because the

(1) I. L. R. 3 All. 417. (2) I. L. R. 7 All. 876 (F. B.)

words in section 115, clause (1), "except where an appeal is prohibited by the Civil Procedure Code as applied by this Act" would not have applied, since an appeal from an order refusing to set aside a sale was not prohibited, but on the contrary allowed, by the Civil Procedure Code; while the provision in section 589, Civil Procedure Code, that an appeal from such an order should lie to the High Court, being inconsistent with section 115, clause 1, was excluded by section 135, Act XXII, 1886, from application to proceedings under that Act. If then the Sale-Officer's order had been appealable under section 588, clause 16, Civil Procedure Code, the appeal from it would, I think, have lain to the Deputy Commissioner, under section 115, clause (1), Act XXII, 1886, notwithstanding the provisions of section 589, Civil Procedure Code; and his appellate order would have been final under the last paragraph of section 588, Civil Procedure Code, because the Judicial Commissioner's jurisdiction to hear and determine appeals from appellate orders of Collectors was expressly made subject by section 117, Act XXII, 1886, to the provisions of the Civil Procedure Code. If therefore the Sale-Officer's order had been, as the Deputy Commissioner seems to have thought it was, appealable as an order refusing to set aside a sale, the Deputy Commissioner's order on appeal from it would have been a case in which no appeal lay to the High Court. The circumstance that, the Sale-Officer's order not being appealable, the Deputy Commissioner had no jurisdiction to hear an appeal from it, could not empower the Judicial Commissioner to hear an appeal from the Deputy Commissioner's appellate order, when the Judicial Commissioner would not have been empowered to hear a second appeal if the Deputy Commissioner had possessed jurisdiction to hear a first appeal. Indeed, as the authorities (*Krishna Ram versus Hingu Lal and others* (1), and *Tota Ram and another versus Ishur Das and others* (2)) stood when the applicant's memorandum of appeal was returned by the learned Judicial Commissioner on the 5th May 1891, it seems that in cases where the Judicial Commissioner

(1) I. L. R. 4 All. 237. (2) I. L. R. 9 All. 445.

No. 63
1892.

would have had jurisdiction to hear a second appeal if the Deputy Commissioner had possessed jurisdiction to hear the first, the Deputy Commissioner's want of jurisdiction to hear the first would have deprived the Judicial Commissioner of jurisdiction to hear a second. A later decision (*Jwala Prasad versus Salig Ram* (1)) passed on the 29th July 1891 has overruled these two authorities; but this decision seems not to extend to cases where, if the Lower Appellate Court had jurisdiction to hear a first appeal, the High Court would not have jurisdiction to hear a second. Lastly, there can be no doubt that in cancelling the sale on the respondents' appeal, the Deputy Commissioner has exercised a jurisdiction not vested in him by law.

I would grant this application for revision, and would reverse the Deputy Commissioner's order of the 10th February 1891, cancelling the sale on payment of Rs. 661 by Ram Bharos, and would direct the respondents to pay the costs of both sides in the appeal to the Deputy Commissioner, and in this application for revision.

Burkitt, J. C.—I fully concur in the very able and exhaustive judgment just pronounced by my learned colleague. I hold with him (1) that this Court has power under section 622 of the Code of Civil Procedure to revise the order of the Deputy Commissioner of Fyzabad which this application impugns, and (2) that that order is absolutely indefensible, it having been passed without even a semblance of jurisdiction in the Deputy Commissioner. It is to be noticed that in his order of February 10th, 1891, the order of which the applicants complain, the Deputy Commissioner completely ignores the perfectly legal orders passed on October 25th 1890 and November 14th 1890, by which the Court executing the decree had confirmed the sale and had granted a sale certificate to applicants. There can be no doubt that these two orders retained their full legal force and effect despite of the preposterous order of February 10th 1891, and that on them the applicants could not have legally been refused possession of the tenure they had purchased.

(1) I. L. R. 13 All. 575.

But as applicants consider the order of February 10th, 1891, to be injurious to their title, and ask us to set it aside, their prayer must be granted. In concurrence with my learned colleague I would cancel that order and direct the respondents to pay applicants' costs (if any) of the so-called appellate proceedings before the Deputy Commissioner, and also to pay applicants' costs of this application.

Nos. 63 & 64
1892.

No. 64.*

*Before M. S. Howell, Esq., LL. D., C. I. E., C. S., Judicial Commissioner,
Oudh.*

PRAG (PLAINTIFF), APPELLANT, *v.* MATHURA (DEFENDANT),
RESPONDENT.

Act XXII of 1886, Act XX of 1890, s. 54—Suit for arrears of rent instituted before Part II of Act XX of 1890 amending Act XXII of 1886 came into force—Appeal to Commissioner under s. 116 of Act XXII of 1886 before its amendment—Appeal transferred to District Judge under s. 54 of Act XX of 1890—Appeal to Judicial Commissioner—Practice—Memorandum of appeal cannot be considered to be an application for revision.

An appeal from the original decree of an Assistant Collector of the first class in a suit for arrears of rent instituted under Act XXII of 1886 before Part II of Act XX of 1890, by which the former Act was amended, came into force, had been preferred to the Commissioner, under s. 116 of Act XXII of 1886 as it stood before its amendment by Part II of Act XX of 1890, and was still pending when it was transferred under s. 54 of Act XX of 1890 to the District Judge, who disposed of the same.

Held, that an appeal did not lie, under s. 119B of Act XXII of 1886, a section inserted into that Act by Part II of Act XX of 1890, from the District Judge's decree to the Judicial Commissioner, inasmuch as the decree was not passed by the District Judge under Act XXII of 1886, but under s. 54 of Act XX of 1890.

Held, also, that inasmuch as a District Judge trying an appeal transferred to him under the second clause of s. 54 of Act XX of 1890 must be deemed for the purposes of such appeal to be a Commissioner, and as, if the Commissioner had disposed of the appeal under the first clause of that section his decree would, under s. 119 of Act XXII of 1886 as it stood before its amendment by Part II of Act XX of 1890, have been final, and

* Followed in *Shah Hamid Ahmad and others, v. Baijnath and others—*R. A. R. 66 of 1893.

No. 64
1892.

the second clause of s. 54 of the latter Act did not effect the finality of the decree to be passed by the District Judge, no appeal would lie to the Judicial Commissioner from the decree of the District Judge.

Held, also, that there was no constitutional right of appeal from the decree of the District Judge, such a right, where it exists, being created by statute. *Jwala Prasad v. Salig Ram* (1) distinguished.

It is not the practice of the Court to allow a memorandum of appeal to be considered to be an application for revision.

1892
15th Dec.

By the Court.—The suit out of which this appeal has arisen was instituted under clause 2, section 108, Act XXII of 1886, on the 29th May 1890, in the Court of an Assistant Collector of the first class, who decided it on the 11th August 1890. An appeal was then preferred to the Commissioner under section 116 on the 18th September 1890. That appeal being still pending on the 1st April 1891, was transferred on the 13th April 1891, under the authority of an order made by the Chief Commissioner under section 54, Act XX of 1890, to the District Judge, who decided it on the 22nd October 1891. This appeal was presented on the 10th February 1892 against the decree of the District Judge; and Babu Lachman Das takes a preliminary objection that no second appeal lies to this Court. The learned pleader contends, on the authority of Select Case No. 193, that the suit is to be governed, from the presentation of the plaint to the passing of the decree in final appeal, by the Act as it stood when the suit was instituted on the 29th May 1890, *i. e.*, before the amendment of the Act by Act XX of 1890; and therefore that no second appeal lies, because under section 119 an appellate decree made by a Commissioner in a suit under clause 2, section 108, of value not exceeding Rs. 100 would be final, unless certain questions, which do not arise here, were determined by such appellate decree.

Babu Bipin Behari Bose, for the appellant, contends (1) that the District Judge must be taken to have decided the suit under the Act as amended, and therefore an appeal lies under section 119B; and (2) that, independently of the Statute, there

is a constitutional right of appeal to the Judicial Commissioner as the High Court of the Province. In support of the latter proposition the learned pleader refers to the case of *Jwala Prasad versus Salig Ram* (1).

I think that Babu Lachman Das' objection is sound, and must be allowed. Under the first clause of section 54, Act XX of 1890, the appeal preferred to the Commissioner on the 18th September 1890, and still pending when Part II of Act XX of 1890 came into force on the 1st January 1891, was to be "disposed of as if this Act had not been passed," *i. e.*, it was to be finally disposed of by the Commissioner. The second clause of the Act enabled the District Judge, instead of the Commissioner, to try the appeal when transferred under the Chief Commissioner's order, but introduced no further modification into the provisions of the first clause, and therefore did not affect the finality of the decree to be passed. The object of the second clause was only to relieve the Commissioners from the duty of deciding such appeals, in certain cases, as should be pending when the second part of the Act should come into force; and not to give a right of second appeal, which would not have existed if the *forum* had not been changed. Section 119B provides for appeals to the Judicial Commissioner from "decrees passed under this Act in appeal by District Judges," *i. e.*, from decrees passed by District Judges in appeals preferred to them under section 119, clause (a), of Act XXII of 1886, as amended by Act XX of 1890; whereas the decree now under appeal was passed by the District Judge in an appeal presented to the Commissioner under section 116 of the unamended Act XXII of 1886, the District Judge having been specially empowered by section 54 of Act XX of 1890, to decide the appeal. It is true that section 119 of the unamended Act gives finality to the decree of a Commissioner, not of a District Judge; but I think that the provisions of the first clause of section 54, Act XX of 1890, necessitate my holding that a District Judge trying an appeal transferred to him under the second clause of that section must be deemed for the purposes of such appeal to be a

(1) I. L. R. 13 All. 575.

Nov. 64 & 65
1892-93.

Commissioner, just as a Court trying a suit transferred to it from a Court of Small Causes is, for the purposes of such suit, deemed to be a Court of Small Causes (section 25, Civil Procedure Code).

Babu Bipin Behari Bose's second contention must be overruled. There is no constitutional right of appeal. Such a right, where it exists, is created by Statute. The case of *Jwala Prasad versus Salig Ram* (1) cited by the learned pleader is not in point, because the District Judge had jurisdiction to decide the appeal when transferred to his Court.

I think, therefore, that no appeal lies from the District Judge's decree in this case. Babu Bipin Behari Bose applies that the memorandum of appeal be considered to be an application for revision; but to such an application it is not the practice of the Court to accede.

This appeal is therefore dismissed with costs.

No. 65.

M. S. Howell, Esq., LL. D., C. I. E., C. S., Judicial Commissioner, Oudh.

1 SUKHAJ SINGH; 2 JUGRAJ SINGH (DEFENDANTS), APPELLANTS,
v. BHAYA TRIBHAWAN DAT RAM (PLAINTIFF), RESPONDENT.

*Act XXII of 1886, s. 132—Limitation of suit for arrears of rent—"Year"—
Act I of 1868 (General Clauses Act), s. 2, cl. (4).*

Although it is reasonable that rent, the realization of which is regulated by the succession of seasons, should be calculated according to the agricultural year, and therefore that the last day of Jeth in the Fasli calendar, as being the end of the agricultural year, should be taken as the starting point of limitation, there is no reason whatever why the period allowed by s. 132, Act XXII of 1886, for the institution of a suit to recover arrears of rent should not be calculated according to the British calendar.

Held, therefore, that clause (4), s. 2 of the General Clauses Act, 1868, obliged the Court to construe "years" in s. 132, Act XXII of 1886, as meaning years reckoned according to the British calendar.

1893
5th Jany.

By the Court.—The suit ending in this appeal was brought for recovery of arrears of rent for 129½ Fasli, the last day of Jeth in which year fell on the 5th June 1887. The limitation

prescribed by law for this suit is "three years from the last day "of the month of Jeth of the Fasli year in which the arrear "fell due" (section 132, Act XXII of 1886), *i. e.*, three years from the 5th June 1887. If the "years" be reckoned according to the British calendar, the period expired on the 5th June 1890; and therefore the suit, which was brought on the 4th June 1890, was within time. But if the "years" be reckoned according to Fasli calendar, the period expired on the 3rd June 1890; and therefore the suit was beyond time. Section 2, clause 4, Act I of 1868 enacts that "In this Act, and in all Acts "made by the Governor-General of India in Council after this "Act shall have come into operation, unless there be something "repugnant in the subject or context,—year . . . shall . . . mean a "year . . . reckoned according to the British calendar." But "the learned vakil for the appellants contends that, since the subject-matter of the suit is rent, which is calculated according to the agricultural year, while section 132, Act XXII of 1886, contains a reference to "the month of Jeth of the Fasli year," there is something repugnant in both the subject and the context to the theory that the "years" means years reckoned according to the British calendar. But though it is reasonable that rent, the realization of which is regulated by the succession of the seasons, should be calculated according to the agricultural year, and therefore that the last day of Jeth in the Fasli calendar, as being the end of the agricultural year, should be taken as the starting point of limitation, there is no reason whatever why the period allowed for the institution of a suit to recover arrears of rent should not be calculated according to the British calendar. And this being so, the provision quoted above from the General Clauses Act, I of 1868, obliges the Court to construe "years" in section 132, Act XXII of 1886, as meaning years reckoned according to that calendar. I find therefore that the suit was within time.

This was the only ground of appeal argued before me by the learned vakil for the appellants, who had apparently abandoned the second ground of appeal as to the yearly increase in the rate of rent.

Nos. 65 & 66
1893.

I confirm the Lower Appellate Court's decree, and dismiss this appeal with costs.

No. 66.

Before G. T. Spankie, Esq., Additional Judicial Commissioner.

- (1) SHAH HAMID AHMAD; (2) HAFIZ ABDUL GHANI; (3) SARJU PARSHAD (PLAINTIFFS), APPELLANTS, *v.* (1) BALJNATH, (2) BAJRANG SINGH; (3) CHAUHARJA BAKHSH; (4) JAGDEO SINGH (DEFENDANTS), RESPONDENTS.

Act XXII of 1886, ss. 117, 138—Act XX of 1890, s. 54—Transfer of appeal from Commissioner to District Judge—Appeal to Judicial Commissioner—Suit for arrears of rent—Third person claiming rent—Nature of inquiry under s. 138 of the Rent Act.

The decree of a District Judge passed in an appeal transferred to him for disposal, under the second clause of section 54 of Act XX of 1890, is not appealable to the Judicial Commissioner under section 119B of the Oudh Rent Act, 1886. Rent Act Ruling No. 64 followed.

Where, if an appeal had been disposed of by the Commissioner, under the first clause of section 54 of Act XX of 1890, instead of having been transferred to the District Judge for disposal, under the 2nd clause of that section, the decree of the Commissioner would have been appealable to the Judicial Commissioner, under section 117 of the Oudh Rent Act, 1886, as it stood before Part II of Act XX of 1890 came into force, *held*, that the District Judge's decree in the appeal so transferred to him was appealable to the Judicial Commissioner, under section 117 of the Rent Act as it then stood. The principle of the decision in Rent Act Ruling No. 64 followed.

Where in a suit for arrears of rent a third party claimed the right to receive the rent of the land to which the suit related, and was accordingly made a defendant, and admitted having received the rent sued for, and the Lower Court limited the inquiry directed by section 138 of the Rent Act to the rent actually sued for, without considering whether or not the tenants had previously paid rent to the third party, *held*, that the Lower Court had decided the suit without making the inquiry contemplated by section 138, that section contemplating an inquiry relating to a period prior to that for which rent is claimed by the plaintiff.

1893
6th January.

By the Court.—The suit, out of which this appeal has arisen, was instituted under clause (2), section 108 of the Oudh Rent Act, 1886, on the 26th June 1888, in the Court of an Assistant Collector of the 1st class. It was a suit for

Ra. 190-12-0, arrears of rent for 1292, 1293, 1294 and 1295 Fasli. One Tafazzul Husain, who claimed the rent of the land to which the suit related, was made a defendant to the suit, under section 138 of the same Act. He admitted having received from the tenants the rent sued for. On the 2nd April 1888 the Assistant Collector dismissed the suit. On the 15th October 1888 the plaintiffs preferred an appeal to the Commissioner, under section 116 of the same Act. On the 21st July 1889 the Commissioner set aside the decree of the Assistant Collector and directed a re-trial of the suit, under section 562 of the Code of Civil Procedure. The suit was accordingly re-tried by the Assistant Collector, and on the 21st December 1889 he decreed the claim of the plaintiffs. The tenants, on the 6th March 1890, preferred an appeal from the Assistant Collector's decree to the Commissioner, under section 116 of the same Act. On the 15th September 1890 the Commissioner, under section 566 of the Code of Civil Procedure, remanded to the Assistant Collector the following issue for trial:—"Has Tafazzul Husain been in the actual receipt and enjoyment of the rent claimed by him to have been collected down to 1292 Fasli?" The Assistant Collector, on the 14th January 1891, came to a finding on this issue against Tafazzul Husain, which he returned to the Commissioner. The appeal was then, presumably, transferred to the District Judge for disposal under the authority of an order made by the Chief Commissioner of Oudh, passed under the 2nd clause of section 54 of Act XX of 1890, by Part II of which the Oudh Rent Act, 1886, has been amended, for the District Judge has disposed of the appeal, which he could not have otherwise done. The District Judge has allowed the appeal and dismissed the suit, by a decree dated the 6th October 1891. On the 4th January 1892 this appeal from the District Judge's decree was presented to this Court by the plaintiffs.

This appeal has apparently been preferred under section 119B of the Oudh Rent Act, 1886, a section inserted therein by Act XX of 1890. The learned pleader, who appeared for the respondents, has not objected that the appeal will not lie to

No. 66
1893.

this Court under that section. But I am aware that in Rent Act Ruling No. 64, decided on the 15th December 1892, the learned Judicial Commissioner has ruled that section 119B of the Rent Act provides for appeals from decrees passed under the Act in appeal by District Judges, and not for appeals from decrees passed under the 2nd clause of section 54 of Act XX of 1890 in appeal by them, which is the nature of the decree from which this appeal has been preferred. I agree in this ruling of the learned Judicial Commissioner. This appeal therefore will not lie under section 119B of the Rent Act. The learned Judicial Commissioner has, however, further decided in the case just cited by me, that the provisions of the first clause of section 54 of Act XX of 1890 necessitate its being held that a District Judge, disposing of an appeal transferred to him under the second clause of that section, must be deemed for the purposes of such appeal to be a Commissioner, just as a Court trying a suit transferred to it from a Court of Small Cause, is for the purposes of such suit, deemed, under section 25 of the Code of Civil Procedure, to be a Court of Small Causes. I agree with the learned Judicial Commissioner that it is absolutely necessary to hold this. If this is not held, then, although a decree which would, on the authority of Select Case No. 193, if passed in appeal by the Commissioner under the first clause of section 54 of Act XX of 1890, be appealable to this Court, under section 117 of the Rent Act, notwithstanding the repeal of that section by Act XX of 1890, unless the appeal was barred by section 119 of the same Act, as it stood before it was amended by Act XX of 1890, yet the same decree, if it had been passed in appeal by the District Judge under the second clause of section 54 of Act XX of 1890, would not be appealable to this Court, because, as already ruled, section 119B of the Rent Act provides only for an appeal to this Court from a decree passed under that Act in appeal by a District Judge, and not from a decree passed under section 54 of Act XX of 1890 in appeal by him.

In the case before me the value of the suit exceeds Rs. 100, and if the appeal from the Assistant Collector's decree, dated

the 21st December 1889, had been disposed of by the Commissioner under the first clause of section 54 of Act XX of 1890, instead of having been transferred to the District Judge for disposal, under the 2nd clause of that section, the decree of the Commissioner would have been appealable to this Court, under section 117 of the Rent Act as it stood before Part II of Act XX 1890 came into force, on the authority of Select Case No. 193. That being so, I hold therefore that the District Judge's decree passed in the appeal so transferred to him is appealable to this Court under section 117 of the Rent Act as it then stood, and therefore proceed to consider this appeal.

It seems to me that the District Judge has decided the suit without making the inquiry contemplated by section 138 of the Rent Act. That section, I think, contemplates an inquiry relating to a period prior to that for which rent is claimed by the plaintiff. In a suit in which the tenant has not paid the rent sued for to the third person, the inquiry directed by section 138 obviously must relate to such period, and therefore, in a suit in which the tenant has paid such rent to the third person, the inquiry must relate to the same period. It cannot be that in the one case the inquiry is to relate to one period and in the other case to another period. It is intelligible why the result of the suit should turn on the question whether the third person has actually and in good faith received and enjoyed the rent prior to the period for which it is claimed by the plaintiff. If he has so received and enjoyed it, the tenant ought not, *prima facie*, to pay the rent sued for to the plaintiff, and if the tenant has paid the rent sued for to the third person, he has only done what he has done before. On the other hand, it is not intelligible why the result of the suit should, in a case where the rent sued for has been paid to the third person, turn merely on the question whether such rent has been in good faith received and enjoyed by such person, because it is difficult to conceive, *prima facie*, a *bond fide* receipt and enjoyment on the part of the third person of the rent sued for, if as a matter of fact the tenant has always previously paid his rent to the plaintiff. In the case before me the District Judge apparently thinks that

Nos. 66 & 67

1893.

the Commissioner made a mistake in remitting the issue he did, because Tafazzul Husain had admitted the receipt of the rent sued for and he has accordingly limited the inquiry directed by section 138 of the Rent Act to the rent actually sued for, without considering whether or not the respondents, the tenants, had previously paid rent to Tafazzul Husain. In my opinion, as I have already indicated, a suit of this kind cannot be decided as intended by section 138 except by an inquiry covering a period prior to that for which rent is claimed. The District Judge also finds that Tafazzul Husain is the proprietor of the land to which the suit relates, but he does not support the finding by a single reason. In a case of this kind the question to be tried is not the title to the land but the question directed to be tried by section 138. It is true of course that the former question may have a bearing on the latter, but its determination is purely incidental to the determination of the latter, which is the main question. For the reasons I have given, under section 566 of the Code of Civil Procedure, I remand to the District Judge the following issue for trial:—
 “Has Tafazzul Husain, previous to the receipt of the rent sued for, actually and in good faith received and enjoyed the rent of the land to which the suit relates?”

If in trying this issue the District Judge considers it necessary to determine the title to the land, he should give his reasons for finding the title to rest with Tafazzul Husain or with the plaintiff Sarju Parshad, as the case may be. The District Judge may take any additional evidence required. On the return of the finding ten days will be allowed for objections

No. 67.*

Before G. T. Spankie, Esq., Additional Judicial Commissioner.

ABDULLAH (PLAINTIFF), APPELLANT, *v.* 1 TAWAKUL HUSAIN ;
 2 EWAZ ALI ; 3 MUSAMMAT BHAGGU (DEFENDANTS), RESPONDENTS;
*Act XXII of 1886, s. 3 (5), (10)—Co-sharer—Sir-land—Rent—Profits—
 Lambardar.*

The profits of *sir-land* held by a co-sharer in a joint estate, to which the other sharers in the joint estate may be entitled, are not “rent” within the meaning of clause (5), s. 3 of the Rent Act, and such co-sharer is not a “tenant” within the meaning of clause (10) of the same section.

A suit by a lambardar against a co-sharer for the share of the profits of a part of an estate due to himself and the other sharers in the estate is not maintainable, a lambardar, as such, having no authority to sue on behalf of himself and other sharers for profits.

* Followed in *Syed Khurshed Ali v. Nawab Ali*, (1 Oudh Cas. 156).

By the Court.—The (plaintiff) appellant sued the (defendants) respondents, Tawakul Husain, Ewaz Ali and Musammat Bhaggu, in the Court of an Assistant Collector of the first class, for Rs. 109-15-4½, “arrears of rent” of *sir*-lands held by the latter for 1295, 1296 and 1297 Fasli. He stated in his plaint as follows:—

No. 67
1893.
1893
31st Jany.

1. “That plaintiff is the lambardar and a co-sharer in a joint mahal of 8 annas in Mauza Bhitaura, and the defendants are also co-sharers in the same mahal. The shares held by the parties are as follows:—

	Annas.	Pies.	Krants.
Abdul-lah, lambardar, plaintiff	... 5	6	10
Ewaz Ali, defendant	... 0	1½	0
Tawakul Husain, ”	... 0	3	0
Musammat Bhaggu, ”	... 0	3	0

2. That the plaintiff, lambardar, is in sole charge of making collections of rent of the khalsa land and of paying the Government revenue and village-expenses, and the defendants collect the rents of the *sir*-lands held by them.

3. That the entire rents of the *sir*-lands held by the defendants, as entered in the jamabandi of their shikmi tenants, is, for each of the three years, Rs. 421-14, and the excess over the share of the defendants is Rs. 178-14-7½.

4. That according to the accounts hereto annexed the defendants realized Rs. 242-15-4½ in excess of their share, out of which Rs. 143 have been recovered from them, and Rs. 109-15-4½ are still due, which they have not paid, although the amount has been demanded from them.”

The (defendants) respondents pleaded, amongst other pleas, that there was misjoinder of causes of action. The Assistant Collector gave the (plaintiff) appellant a decree for Rs. 32-5 against Tawakul Husain, for Rs. 74-5-6 against Ewaz Ali, and for Rs. 2-9 against Musammat Bhaggu. On appeal by the (defendants) respondents the Lower Appellate Court dismissed the suit. This appeal has in consequence been preferred.

Nos. 67 & 68
1893.

The (plaintiff) appellant has described the suit as one for arrears of rent. If the suit were really one of that description, the frame of it would be bad, by reason of misjoinder of causes of action. Each of the (defendants) respondents hold separate portions of the *sir*-lands to which the suit relates separately, and if liable to pay rent, their liability is several. The suit is, however, not one for rent. The profits of the *sir*-lands held by the (defendants) respondents, to which the sharers in the joint estate may be entitled, cannot be said to be moneys payable on account of the use and occupation of such lands, and they are therefore not "rent" within the meaning of clause (5), section 3 of the Rent Act, and the (defendants) respondents are not liable to pay such moneys as "rent," and are therefore not "tenants," within the meaning of clause (10) of the same section. They are not under-proprietors. The suit is really a suit by a lambardar against a co-sharer for the share of the profits of a part of an estate due to himself and the other sharers in the estate. In my opinion such a suit is not maintainable. A lambardar, as such, has no authority to sue on behalf of himself and other sharers for profits. This is shown, I think, by clause (15), section 108 of the Rent Act, where, in addition to a suit by a sharer against a lambardar, the only other suit for profits provided for is a suit by a sharer against a co-sharer; and by section 126, where certain powers are specified which in a joint estate are to be exercised through the lambardar only, and the power to sue for profits is not included in the powers so specified. For these reasons I think the decree of the Lower Appellate Court should be affirmed, and therefore dismiss the appeal, with costs.

No. 68.

Before M. S. Howell, Esq., LL. D., C. I. E., C. S., Judicial Commissioner.

1 MAHESHAH; 2 SHEO BADAN (DEFENDANTS), APPLICANTS, v.
BHIKH CHAND (PLAINTIFF), RESPONDENT.

Act XXII of 1886, ss. 116, clause (b), 135—Appellate decree of Collector appealable to Commissioner and not to District Judge—Civil Procedure Code, ss. 588, clause (6), 622—Return of memorandum of appeal—Appeal from order—Judicial Commissioner's powers of revision in suits under the Rent Act.

A decree passed by a Collector on an appeal preferred under s. 116, clause (a) of the Oudh Rent Act, from a decree passed by an Assistant

Collector of the second class in a suit brought under clause (16), s. 108, was appealed to the Commissioner, who returned the memorandum of appeal for presentation to the District Judge.

Held, that the decree being an appellate decree of a Collector the appeal from it lay to the Commissioner under s. 116, clause (b), and the District Judge was right in holding that he had no jurisdiction to entertain the appeal.

Held, also, that the revisional jurisdiction of the Court of the Judicial Commissioner under s. 622, Civil Procedure Code, read with s. 135 of the Rent Act, is restricted to those cases in which the course of appeal lies to that Court under ss. 119 and 119B of the latter Act, and does not extend to cases in which the course of appeal lies to the Board, and that as the course of appeal in the suit did not lie to the Court of the Judicial Commissioner, that Court had no revisional jurisdiction over the order passed by the Commissioner on the memorandum of appeal presented to his Court. *Ram Dayal v. Ramadhin* (1) referred to.

Held, also, that, if it were said that the order of the Commissioner was made under s. 57, read with section 582 and section 587, Civil Procedure Code, and was therefore appealable under s. 588, clause (6), and that the order having been made in the exercise of appellate jurisdiction, the appeal given from it by s. 588, clause (6) lay to the Judicial Commissioner, under s. 589, as the High Court of the Province; inasmuch as an order returning a memorandum of appeal for presentation to the proper Court does not come under clause (6) or any other clause of s. 588, and is therefore not appealable, there was no appeal from the order made by the Commissioner in the exercise of his appellate jurisdiction.

Kunhikutti v. Achotti (2) dissented from. *Mahabir Singh v. Behari Lal* (3) followed.

By the Court.—The suit having been instituted on the 8th August 1891, Act XXII of 1886, as amended by Act XX of 1890, must govern this case.

1893
7th Feby.

The decree sought to be appealed against was passed by a Collector on an appeal preferred under section 116, clause (a), from a decree passed by an Assistant Collector of the second class in a suit brought under clause (16), section 108. If the decree sought to be appealed against had been an original decree of a Collector in such a suit, the appeal would have lain

(1) I. L. R. 12 All. 198. (2) I. L. R. 14 Mad. 462.

(3) 11 Weekly Notes 96.

No. 68
1893.

under section 119 to the District Judge or to the Judicial Commissioner, according to the value of the suit, and in this case to the District Judge, the value being only Rs. 19. But, the decree being an appellate decree of a Collector, the appeal from it lies to the Commissioner under section 116, clause (b). The learned District Judge was therefore right in holding that he had no jurisdiction to entertain the appeal. He was not bound to refer the question to this Court for decision under section 124A, as he felt no doubt about it.

I think that the learned Commissioner was mistaken in supposing that he had no jurisdiction to entertain the appeal. But I also think that I have no jurisdiction to correct this error on revision. The full Court decided in *Babu Udres Singh versus Ram Bharos* (1) that this Court had jurisdiction to revise an order passed by a Deputy Commissioner on what purported to be an appeal under the Rent Act; but that case was governed by Act XXII of 1886, as the Act stood before its amendment by Act XX of 1890. Now under the unamended Act the Judicial Commissioner was the highest Revenue Court of the Province (section 109), and had jurisdiction to hear appeals from appellate orders of Collectors and Commissioners (section 117). But under the amended Act the Judicial Commissioner is no longer a Revenue Court (section 109), though, for the purpose of deciding certain classes of appeals under the Act, he has the powers conferred on the Revenue Court. And the jurisdiction to hear appeals from appellate orders of Commissioners is now vested in the Board, not in the Judicial Commissioner (section 116, clause (c)). I am of opinion that the revisional jurisdiction of this Court under section 622, Civil Procedure Code, read with section 135 of the Rent Act, is restricted to those cases in which the course of appeal lies to this Court under sections 119 and 119B of the latter Act, and does not extend to cases in which the course of appeal lies to the Board. A similar opinion was expressed by the Allahabad High Court as to its revisional jurisdiction in cases under Act XII of 1881 (*Ram Dayal versus Ramadhin*) (2). Now in the case of suits under section 108,

(1) Rent Act Ruling No. 63. (2) I. L. R. 12 All. 198.

clause (16) of Act XXII, 1886, if the suit be tried and determined by an Assistant Collector of the first class under section 114, or by a Collector under section 115, the appeal lies to the District Judge or the Judicial Commissioner, under section 119, according as the value of the suit does not, or does, exceed Rs. 5,000 ; and, if the first appeal lies to the District Judge, a second appeal lies to this Court under section 119B. But if, as here, the suit be tried and determined by an Assistant Collector of the second class under section 113, the appeal lies to the Collector under section 116, clause (a); and from the Collector's appellate decree a second appeal lies to the Commissioner under section 116, clause (b), after which there is no third appeal to the Board under section 116, clause (c), as the Board have recently held (*Ram Charan Lal versus Naznin Begam*) (1). Thus the course of appeal in this suit does not lie to this Court, which has therefore no revisional jurisdiction over the order passed by the learned Commissioner on the memorandum of appeal presented to his Court. It has been held in *Kunhikutty versus Achotti* (2) that, when a Civil Court of first appeal makes an order returning a memorandum of appeal for presentation to the proper Court, the remedy is by appeal under section 588, clause 6, as from an order made under section 57 read with section 582 ; and that, since this appeal lies to the High Court under section 589, an application for revision under section 622 is not admissible. It may be said that, the provisions of the Civil Procedure Code being applied by section 135 of Act XXII of 1886 to all suits and other proceedings under this Act, the learned Commissioner's order returning the memorandum of second appeal for presentation to the District Judge was made under section 57, read with section 582 and section 587, Civil Procedure Code ; and is therefore appealable under section 588, clause 6, on the authority of the Madras case just cited ; and further that, the order having been made in the exercise of appellate jurisdiction, the appeal given from it by section 588, clause 6, lies to the Judicial Commissioner, under section 589, as the High Court of

(1) 13 Weekly Notes 4 ; S. C. S. D. Bd. of Rev. No. 5 of 1892.

(2) I. L. R. 14 Mad. 462.

Nos. 68 & 69
1893.

the Province. But in *Mahabir Singh versus Behari Lal* (1) it has been held by the Allahabad High Court that an order returning a memorandum of appeal for presentation to the proper Court does not come under clause 6 or any other clause of section 588, and is therefore not appealable; and the reasoning in this case does not seem to me to be answered by the argument in the Madras case. The provisions of section 116, Act XXII of 1886, as to appeal under the Rent Act being expressly made "subject to the provisions.....of the Code of "Civil Procedure as applied by this Act," it follows that, if the Allahabad Court's decision in the case last cited be correct, as I think it is, there is no appeal from the order made by the learned Commissioner in the exercise of his appellate jurisdiction (section 591, Civil Procedure Code). I have already shown that this Court has no power to revise its order. Possibly there may be a remedy by application to the learned Commissioner under section 623, Civil Procedure Code, read with section 135, Act XXII of 1886, to review his order.

There appears to be no provision in the Act, analogous to those of section 199 in Act XII of 1881, for the exercise of revisional jurisdiction by the Board in such a case; and section 124, regulating the "general subordination of Courts," omits to declare that Commissioners shall be subordinate to, and subject to the direction and control of, the Board.

This application is dismissed. Each party must bear his own costs.

No. 69.

Before M. S. Howell, Esq., LL. D., C. I. E., C. S., Judicial Commissioner.

GHULAM RAZA KHAN, PLAINTIFF, *v.* BANSOPTI AND BOOHI, AHIRS,
DEFENDANTS.

Act XXII of 1886, s. 108, cl. (2)—Landlord and tenant—Occupancy-tenant—Suit by landlord against successor of occupancy-tenant for arrears of rent accrued due in the life-time of his predecessor—Jurisdiction—Civil and Revenue Courts.

A suit by a landlord against the heirs of a deceased occupancy-tenant for recovery of arrears of rent accrued due in the life-time of the defendants'

father, the defendants having taken over the holding in succession to their late father, is cognizable by the Revenue Courts. **Nos. 69 & 70**
1893.

The judgment of the majority of the Judges in *Lekhray Singh v. Rai Singh* (1) followed.

By the Court.—This is a suit by a landlord against the two sons and heirs of a deceased occupancy-tenant named Matao for the recovery of arrears of rent which accrued due in the life-time of the defendants' father. **1893**
24th March.

One of the two defendants named Bansopti having raised in his defence a plea that the suit was not cognizable by the Revenue Court, the presiding Officer referred the matter to this Court under section 124A through the Deputy Commissioner. Here, however, the defendant abandons this plea.

The defendants have admittedly taken over the holding in succession to their late father; and for the reasons given in the judgment of the learned Chief Justice of the Allahabad High Court, in the recent Full Bench case of *Lekhray Singh versus Rai Singh*, and concurred in by three other Judges of that Court, I hold that the suit is cognizable by the Revenue Court, and I order the presiding Officer to proceed with it.

The parties having appeared in person, no order as to costs of this reference is made.

No. 70.

Before G. T. Spankie, Esq., Additional Judicial Commissioner.

MUSAMMAT MAHESHA (PLAINTIFF), APPELLANT, *v.* KAMPTA
 PARSHAD (DEFENDANT), RESPONDENT.

Civil Procedure Code (Act XIV of 1882), s. 13, Explanations II, IV—Res judicata—Omission to bring forward in a prior suit what then would have been a defence—Accounts between co-sharers—"Final" decision—Lambardar and co-sharer—Profits when due to co-sharer.

K., co-sharer and lambardar in a certain village, sued M., a co-sharer in the same village, for his share of certain profits of the village for 1295, 1296 and 1297 Fasli. On the 5th September, 1890, the Assistant Collector

No. 70
1893.

gave *K.* a decree for a certain sum. *M.* appealed from the decree. *M.* then, on the 28th February 1891, sued *K.* in the Court of the same Assistant Collector for her share of the profits of the *sir*-lands for the same years, and up to Aghan 1298 Fasli. On the 29th May 1891 the Assistant Collector gave *M.* a decree for a certain sum. *K.* appealed from this decree. The appeals were heard by the District Judge on the 2nd May 1892. He first dismissed *M.*'s appeal, and then decreed *K.*'s appeal on the ground that the suit, as regards the claim for the years 1295, 1296 and 1297 Fasli, was barred by Explanation II, s. 13 of the Civil Procedure Code. *M.* appealed to the Court of the Judicial Commissioner from both decrees of the District Judge.

Held, that the claim in the second suit in respect of the years 1295, 1296 and 1297 Fasli might and ought to have been made a ground of defence in the first suit, within the meaning of Explanation II, s. 13 of the Civil Procedure Code. *Mahabir Pershad v. Macnaghten* (1) referred to.

The last sentence in Explanation IV, s. 13, means that a decision, against which an appeal is pending, is not a final decision within the meaning of the section. The Legislature intended that for the purposes of the section a decision should be regarded as final unless an appeal from it had been made. *Balkishan v. Kishan Lal* (2) dissented from. A decision is not the less final within the meaning of the section because the decision which has affirmed it is itself liable to appeal.

Held, therefore, that when the Assistant Collector decided the second suit, his decision in the first suit was not a final one within the meaning of the section, and he was therefore right in refusing to allow that decision to bar the adjudication of the claim in the second suit in respect of the years 1295, 1296 and 1297 Fasli; but as that decision became final, for the purposes of the section, when the appeal against it was dismissed by the District Judge, the latter was right in holding that under Explanation II of the section the Assistant Collector's decision in the first suit barred any adjudication on his part of that claim, and that, as the District Judge's decree dismissing *M.*'s appeal had been affirmed, and the Assistant Collector's decision had thus become final, the District Judge's decree decreeing *K.*'s appeal should be affirmed. *Bholabhai v. Adesang* (3) distinguished.

In the absence of custom regulating the practice, or when there is no agreement between the share-holders on the point, a share of profits becomes due to a co-sharer from the lambardar at the close of the agricultural year as defined in section 2, Act XVII of 1876, or, in case there has been a

(1) I. L. R. 16 Cal. 682; S. C., L. R. 16 I. A. 107.

(2) I. L. R. 11 All. 148. (3) I. L. R. 9 Bom. 81.

rendition of accounts, then from the date of the rendition. *Ganeshi v. Laloo* (1), *Asraf Khan v. Amir Khan* (2) and *Bhikhan Khan v. Ratan Kuar* (3) referred to.

No. 70

1893.

There being no custom or agreement or rendition of account set up or proved in this case, *held*, that the claim in respect of 1298 Fasli was premature.

The defendant in this suit, Kampta Parshad, co-sharer and lambardar in Mauza Kamrajot, on the 21st July 1890, instituted a suit against the plaintiff in this suit, Musammam Mahesha, also a co-sharer in the same village, in the Court of Munshi Raj Bahadur, Assistant Collector of the first class, for Rs. 240, principal and interest, being his moiety of the profits of a half share of the village for the years 1295, 1296, and 1297 Fasli. With his plaint the defendant filed an account showing the gross rents received from the tenants, the Government revenue and village-expenses, the amounts paid by him for the plaintiff for Government revenue, the amounts collected by her from the tenants of a part of the village called Chak Arazi Kamrajot, from whom the plaintiff ought not to have made collections, the sums realized by him, and the balance due to him.

1893
23rd May.

The plaintiff in her written statement denied the correctness of this account, and asserted that the defendant had collected more than his own share of the rents, and that Rs. 38-14-7 were due to her, for which she claimed a decree. She alluded in her written statement to the profits of the *sir*-lands and to "*nazranah*," but she did not ask that the account to be taken by the Court should include these items.

On the 5th September, 1890, having taken an account, the Assistant Collector gave the defendant a decree for Rs. 83-7-5. From this decree the plaintiff appealed to the Commissioner.

On the 28th February 1891 the plaintiff instituted this suit against the defendant, in the Court of the same Assistant Collector, in which she claimed Rs. 149-5-7½ as her share of the profits of the *sir*-lands and of "*nazranah*," etc., from 1295 to Agham 1298 Fasli. The defendant pleaded, amongst other

(1) Rent Act Ruling No. 21. (2) Rent Act Ruling No. 45.

(3) I. L. R. 1 All. 512.

No. 70
1898.

things, that the suit, as regards the claim for 1295, 1296, and 1297 Fasli, was barred by the provisions of section 13 of the Civil Procedure Code, and, as regards the claim for 1298 Fasli, was premature. The Assistant Collector disallowed these pleas, and on the 29th May, 1891, gave the plaintiff a decree for Rs. 113-13-6. From this decree the defendant appealed to the District Judge under section 119 of the Rent Act as it now stands. In the meantime the appeal preferred by the plaintiff to the Commissioner from the Assistant Collector's decree in the former suit had been transferred to the District Judge for disposal, under the provisions of section 54 of Act XX of 1890. On the 2nd May, 1892, the District Judge disposed of both appeals. He dismissed the plaintiff's appeal from the Assistant Collector's decree, dated the 5th September 1890, and decreed the defendant's appeal from the decree of the Assistant Collector in favour of the plaintiff, dated the 29th May 1891, and dismissed her suit. The District Judge was of opinion that, as regards the claim for the years 1295 to 1297 Fasli, the suit was barred by the provisions of section 13, Explanation II, Civil Procedure Code, and that, as regards the claim for 1298 Fasli, it was premature, as profits of that year were not due at the time the suit was instituted.

The plaintiff has appealed from both decrees of the District Judge. This appeal is the appeal from the decree of the District Judge reversing the Assistant Collector's decision, dated the 29th May 1891. The other appeal has already been decided by me to-day, and I have modified the decree of the Assistant Collector, dated the 5th September 1890, as regards costs, so as to bring it into conformity with the judgment.

Two questions for decision are raised by this appeal. One is whether the suit as regards the claim for 1295 to 1297 Fasli is barred by section 13, Explanation II, Civil Procedure Code. The other is whether the suit is premature, as regards the claim for 1298 Fasli.

If the determination of the former question depended merely on whether the claim might and ought to have been made a

ground of defence in the former suit between the parties, within the meaning of section 13, Explanation II, or not, I should not have hesitated in holding that the District Judge had properly applied the principal of *res judicata* to the claim, regard being had to the case of *Mahabir Pershad* versus *Macnaghten* (1). But in order to make the subject-matter or any part thereof of a suit *res judicata*, it is necessary that the matter should have been "finally" decided. Explanation IV to section 13 says that "a decision liable to appeal may be final within the meaning of this section until the appeal is made." These words must mean that a decision, an appeal against which is pending, is not a final decision within the meaning of the section. That is the meaning placed upon the words by Mr. Justice Mahmood in *Balkishan* versus *Kishan Lal* (2). That learned Judge also held in that case (Edge, C. J. and Straight, J. concurring) that a decision liable to appeal cannot operate as *res judicata*. On the 28th February 1891, when the suit out of which this appeal has arisen was instituted, and also on the 29th May 1891, when it was decided by the Assistant Collector, the Assistant Collector's decision in the former suit between the parties, dated the 5th September 1890, was the subject of a pending appeal. That decision was therefore at neither of those periods of time a "final" decision within the meaning of section 13. On the 2nd May, 1892, the appeal was dismissed by the District Judge. Did the decision then become a "final" decision within the meaning of section 13? In my opinion it then became such a decision, and remained such a decision until the District Judge's decree dismissing the appeal was appealed to this Court. The word "may" in the expression in Explanation IV to section 13, "a decision liable to appeal *may*, etc.," seems to me to mean "is." The Legislature, I think, intended that, for the purposes of section 13, a decision should be regarded as final unless an appeal from it had been made, and that when an appeal from it had been made, and so long as that appeal was pending, the decision should not be regarded as final for the purposes of that

(1) I. L. R. 16 Cal. 682 ; S. C., L. R. 16, I. A. 107.

(2) I. L. R. 11 All. 148.

No. 70
1893.

section. I am aware that in expressing this opinion I am dissenting from the views of the three Judges who decided the case of *Balkishan* versus *Kishan Lal*. Those views, however, seem to me to be opposed to the true meaning of the concluding sentence of Explanation IV, and I cannot therefore be guided by them. If my view is correct that a decision is not the less final within the meaning of section 13 merely because it is liable to appeal, then the decision is not the less final because the decision which has affirmed it is itself liable to appeal. The result therefore of the view I take of the matter is that, when the Assistant Collector decided this suit, his decision in the former suit between the parties was not a "final" one, within the meaning of section 13, and the Assistant Collector was therefore right in refusing to allow that decision to bar the adjudication of the claim in the present suit in respect of the years 1295 to 1297 Fasli; but as that decision became final, for the purposes of section 13, when the appeal against it was dismissed by the District Judge, notwithstanding that the District Judge's decision itself was liable to appeal, the District Judge was right in holding, when he disposed of the appeal by the defendant from the Assistant Collector's decision in this suit, that under section 13, Explanation II, the Assistant Collector's decision in the former suit barred any adjudication on his part of that claim. The effect of my judgment in the other appeal is to render that decision, which ceased to be final when the District Judge's decision which affirmed it was appealed against to this Court, once more final. The District Judge's decree from which this appeal is preferred should therefore be affirmed.

I have only to add in connection with this question that the case of *Bholabhai* versus *Adesang* (1) does not support the contention of the pleader for the appellant that the decision of the Assistant Collector in the former suit, being the decision of a Court not competent to try the case in which it was passed with final effect, cannot ever operate as *res judicata*. That case merely decides that, where a Court, although the same

(1) I. L. R. 9 Bom. 81.

physically, had not on the two occasions an identical jurisdiction, its decision on the first occasion did not operate as *res judicata* on the second occasion. In this case the jurisdiction of the Assistant Collector on both occasions was identical. On each occasion he was not competent to try the case in which the decision was passed with conclusive effect.

With respect to the second question, the case of *Ganeshi versus Laloo* (1) has been cited. In that case it was held that a share of profits did not become due, within the meaning of section 106 of the Oudh Rent Act, 1868, until the close of the Fasli year, unless it could be established that a rendition of accounts had taken place, and in that case a share of profits became due from the date of the rendition. In so far as it was decided in that case that a share of profits does not become due until the close of the Fasli year, that case has been dissented from by the learned Judge who decided the case of *Asraf Khan versus Amir Khan* (2). Whether the learned Judge who decided the latter case agreed with the opinion of the majority or of the minority of the learned Judges before whom the case of *Bhikhan Khan versus Ratan Kuar* (3) came, is not clear. I agree with the minority in thinking that in the absence of custom regulating the practice, or where there is no agreement between the share-holders on the point, a share of profits becomes due at the close of the agricultural year, as defined, for Oudh, in section 2, Act XVII of 1876, (Oudh Land Revenue Act). I also agree with the learned Judge who decided the case of *Ganeshi versus Laloo* that, when a rendition of accounts has taken place, a share of profits becomes due from the date of rendition. There is no custom or agreement or rendition of accounts set up here or proved. I agree therefore with the District Judge that the suit as regards the claim for 1298 Fasli was premature.

For the reasons given above I am consequently of opinion that the suit was properly dismissed by the District Judge. The appeal is dismissed with costs.

(1) Rent Act Ruling No. 21. (2) Rent Act Ruling No. 45.

(3) I. L. R. 1 All. 512.

No. 71

1893.

No. 71.

Before H. F. Evans, Esq., C. S., Officiating Judicial Commissioner.

NANKU SINGH (DEFENDANT), APPELLANT, *v.* GHOLAM HUSAIN,
MINOR, UNDER THE GUARDIANSHIP OF CHAMPA BEGAM (PLAINTIFF),
RESPONDENT.

*Act XXII of 1886, s. 127—Rent payable for land occupied without consent
of landlord—Limitation.*

The recovery of rent under s. 127 of the Oudh Rent Act is not limited to one year's rent, but the limitation is the same as for the recovery of rent from a tenant occupying with the landlord's consent. *Rent Appeal* No. 191 of 1890 dissented from.

1893
11th May.

By the Court.—The respondent sued the appellant for three years rent of 22 bighas 9½ biswas, for 1294—1296 Fasli, on allegation that the appellant is liable for the rent of this land, under section 127 of the Oudh Rent Act.

Both the Court of first instance and the Lower Appellate Court found that he was liable for rent at equitable rates. But the Lower Appellate Court held that only rent for one year could be decreed under section 127, and therefore amended the decree of the first Court, which had decreed rent as due for three years.

The facts are that the appellant had obtained a decree in 1871 for 113 bighas 10 biswas of *sir* land, declaring that he had a proprietary and transferable right in certain specified lands of that total area, on payment of the Government revenue and 10 per cent as dues to the Taluqdar. In 1885, while the respondent's estate was under the management of the Court of Wards, the appellant received a *patta* for 42 bighas 13 biswas at a specified rent. The land for which rent is claimed in this suit is not included either in the land decreed to appellant in 1871, or in the *patta* of 1885.

Both the Lower Courts held that the appellant held this land without the respondent's consent.

It was found that for some reason or other the appellant was not in possession of certain of the fields specified in the decree with a total area of some 6 bighas. The first plea in appeal is,

that the respondent having allowed the appellant to occupy these lands, although they were not included in the decree or *patta*, the appellant must be held as holding them under that decree or *patta*. It is not, however, alleged or shown that the appellant was put in possession of these fields by the respondent, either on the supposition they were covered by the decree and *patta*, or in any other way. The statements of the appellant as to the manner and time in which he got possession are altogether vague: at the best, they do not go further than to assert that by some mistake or other the appellant did not take possession of some of the fields he was entitled to and took others instead. It is perfectly clear, even if the respondent did under a misapprehension allow the appellant to cultivate these fields as having been decreed to him, this was no *consent* with *knowledge* as can alone be binding on the respondent. He was perfectly within his rights in claiming rent as soon as he was aware of the mistake. The plea that there is no proof that appellant got possession without respondent's consent is not maintainable. The respondent having shown that the land was neither covered by the decree nor by the *patta*, it was for the appellant to prove consent on the part of the respondent; and that he has not done. The last plea is, that even if respondent had not consented, the appellant has acquired a prescriptive right to hold this land as under the decree, because he has held it for over twelve years. If the appellant relied on this plea it was for him to prove possession of this character for twelve years: this he has not attempted to do. The evidence on the record does not show when he got possession of this land, but the fact that in 1885 he was given a separate *patta* for land found in his possession and not awarded to him by the decree certainly suggests that he was not then in possession of the land, which is the subject of this suit. The appellant has then failed to prove his alleged possession of twelve years, on which he bases his claim to hold by prescriptive right.

The appeal thus fails on all grounds and must be dismissed.

The respondent has filed objections under section 561, Civil Procedure Code. One objection is that he should have been awarded interest in addition to the rent awarded to him. In such a case as this, I do not think interest should be awarded as a matter of course. I disallow this objection.

No. 71
1893.

The second objection is one of greater importance and difficulty. The respondent urges that the Lower Appellate Court was wrong in disallowing the award of rent for the first two of the three years for which rent was claimed and only allowing rent for one year. The appellant maintains that only one year's rent can be awarded under section 127 of the Rent Act: and his pleader has referred to a decision of Mr. W. Young, Judicial Commissioner, in the case of *Pir Khan* versus *Babu Ram Sahai*.* In that case the Judicial Commissioner held that only one year's rent could be awarded under section 127 of the Act, on the ground that "arrears of rent can hardly be said to accrue when no rent has ever been fixed or paid. Such rent for one year, I take it, can be sued for and obtained under the express provisions of section 127 of the Act, which gives the Court the power to fix an equitable rent where none was paid 'in the previous year,' which clearly refers to one year only."

Section 127, Act XXII of 1886, is of a novel character. In the absence of such express provisions as are contained therein, the landlord would clearly be compelled to have recourse to the Civil Court to recover damages, by way of compensation for trespass upon immoveable property, from any person who has occupied his land without the landlord's consent. It would appear to have been the intention of the Legislature to bring such cases within the jurisdiction of the Rent Courts by directing that a person occupying land without the landlord's consent shall be liable for *the rent of that land*.

As, under the circumstances, there could have been no agreement between the parties as to the amount of the rent payable in the years in question, it is further laid down that if rent had been payable the previous year, the occupant shall be liable for rent at that rate: if for any reason no rent was payable during the previous year, the Court has to determine a fair and equitable rent. Section 127 does not contain any provision as to limitation; but as the liability of the occupant is declared to be a liability for *rent*, the limitation would be that which applies to suits for rent. The "previous year" referred to in

* Rent Appeal No. 191 of 1890.

section 127 must be the "year previous" to that for which the rent is claimed. When, as in this instance, rent is claimed for three years, 1294, 1295, and 1296 Fasli, and no rent was payable in 1293 Fasli, the rent for each year has to be determined by the Court.

Nos. 71 & 72
1893.

I am unable to see why the tenant with consent of the landlord should be liable to be sued for three years rent, while the trespasser should be liable for only one year's rent: nor do I think it can have been contemplated that the landlord should have to sue in the Civil Court for compensation for trespass during two years of occupation by the trespasser and then sue him for rent for the third year of it.

For these reasons, I am compelled to dissent from the ruling quoted above, and to hold that the limitation for the recovery of rent, claimed under section 127, Act XXII of 1886, is the same as for the recovery of rent from a tenant occupying with the landlord's consent, *viz.*, three years.

I therefore allow this objection, and set aside the decree of the Lower Appellate Court, and restore the decree of the Court of first instance.

The appeal is dismissed with costs.

No. 72.

Before M. S. Howell, Esq., LL. D., C. I. E., C. S., Judicial Commissioner.

KUNWAR HARNAM SINGH (PLAINTIFF), APPELLANT, *v.* RAM LAL
AND 7 OTHERS (DEFENDANTS), RESPONDENTS.

Act IX of 1889 (The N.-W. P. and Oudh Kanungos and Patwaris Act), ss. 9, 13, 15,—“Estate”—“Landholder”—“Tenant”—Inferior proprietor of parcel of land—Patwari-rate—Patwari-cess.

The revenue chargeable on a parcel of land situate in the village of B. had been fixed by the Settlement Officer, in order to serve as a basis for calculating the rent payable by the inferior proprietors of such land to the superior proprietor, but such parcel of land was not separately assessed to land-revenue. The revenue on the parcel was paid by the superior proprietor as an integral part of the revenue assessed on the whole village of B. The inferior proprietors of the parcel did not hold a sub-settlement of

No. 721893.

the whole village of B. *Held*, that the parcel of land was not an "estate, nor were the inferior proprietors "landholders," but they were tenants on the superior proprietor's "estate" of B, within the definition given in s. 9 of Act IX of 1889, and that they were therefore chargeable with patwari-cess, not patwari-rate.

1893
22nd Sept.

By the Court.—The appellant as agent for the Maharaja of Kapurthala, a ruling chief holding land in the Province of Oudh, brought a suit under clause 2, section 108, Act XXII of 1886, against the respondents who are the inferior proprietors of a parcel of land called Pura Bulaki, forming part of the village and manor of Basnaira, included in the Taluka of Bondi, in the district of Bahraich, of which parcel of land the Maharaja, as Talukdar of Bondi, and therefore lord of the manor of Basnaira, is superior proprietor. The suit was brought for the recovery of Rs. 31-6-0 as arrears of rent on the said parcel of land for the year 1297 Fāsli; and the following are the particulars of account:—

By Cash paid ...	Rs. 158 2 0	To Revenue ...	Rs. 129 5 0
„ Balance ...	„ 31 6 0	„ Malikana ...	„ 46 11 0
Total „	189 8 0	Total „	176 0 0
		To Chaukidari ...	„ 5 5 6
		„ Local rates ...	„ 2 10 6
		Total „	184 0 0
		To Patwari-rate, „	5 8 0
		Total „	189 8 0

The Rs. 5-8-0 seem to have been calculated at $1\frac{1}{2}$ per cent. as patwari-rate payable under section 13, Act IX of 1889, on the annual value computed at double Rs. 184, *i. e.*, Rs. 368. The defendants (respondents) pleaded that what they were bound by law to pay to the Maharaja under Act IX of 1889, was patwari-cess under section 15, calculated at $1\frac{1}{2}$ pies per rupee on their rent, not patwari-rate under section 13 calculated at $1\frac{1}{2}$ per cent. on the annual value of their land. The first Court decided that they were liable to pay patwari-rate at $1\frac{1}{2}$ per cent. on the annual value of their land; but that the annual value should be taken to be double the revenue Rs. 129-5-0, *i. e.*, Rs. 258-10-0 on which sum $1\frac{1}{2}$ per cent. came to Rs. 3-14-0. Accordingly, reducing the sum claimed by

Re. 1-10-0 the difference between Rs. 5-8-0 and Rs. 3-14-0, that Court gave a decree for Rs. 29-12-0. The Maharaja acquiesced in this solution of the matter, but the defendants appealed, whereupon the District Court cut the Rs. 3-14-0 down to Re. 1-0-2, holding that the defendants were liable to patwari-cess, under section 15, calculated at $1\frac{1}{2}$ pies on Rs. 129-5-0 the amount of revenue. From this decree the Maharaja, by his agent, has appealed to this Court, in order to recover the Rs. 2-13-10, wrongly stated in the memorandum of appeal as Rs. 3-13-10, disallowed by the District Court. The ground of appeal is that the (defendants) respondents are liable to pay to the Maharaja patwari-rate under section 13, not patwari-cess under section 15. This ground is untenable. It is true that the revenue chargeable on the parcel of land has been fixed by the Settlement Officer, in order to serve as a basis for calculating the rent payable by the (defendants) respondents to the Maharaja; but the parcel of land is not separately assessed to land revenue, nor is any such allegation even made in the plaint. The revenue on the parcel is paid by the Maharaja as an integral part of the revenue assessed on the whole manor of Basnaira. The defendants do not hold a sub-settlement of the whole village, *i. e.*, Basnaira, in which their land, called Pura Bulaki, is situated. That being so, their parcel of land is not an "estate" nor are they "land-holders," but they are "tenants" on the Maharaja's "estate" of Basnaira within the definition given in section 9 of the Act. Accordingly, the learned District Judge was clearly right in holding that they were chargeable with patwari-cess, not patwari-rate. This finding disposes of the only ground taken in the memorandum of appeal. The appellant's learned vakil, however, with the permission of the Court, was allowed to argue another ground, namely that the Lower Appellate Court was wrong in computing the cess on the revenue Rs. 129-5-0 instead of the rent Rs. 176-0. That this is so is clear from the wording of section 15. The amount of the cess should therefore be Re. 1-6-0, not Re. 1-0-2; and the appellant ought to succeed to the extent of Re. 0-5-10, the amount decreed being raised from Rs. 26-14-2 awarded by the District Court to Rs. 27-4-0.

The Lower Appellate Court's decree is modified to this extent. Costs of this appeal to be borne by the parties according to the amounts decreed and dismissed.

No. 73

1893.

No. 73.

*Before M. S. Howell, Esq., LL. D., C. I. E., C. S., Judicial Commissioner,
and G. T. Spankie, Esq., Additional Judicial Commissioner.*

**AMJAD ALI KHAN (PLAINTIFF), APPELLANT, v. ABDUL RAHMAN
KHAN (DEFENDANT), RESPONDENT.**

Act IX of 1889 (N.-W. P. and Oudh Kanungos and Patwaris Act), ss. 13, 15, 16—Patwari-rate—Patwari-cess—Liability of an under-proprietor with whom a sub-settlement of the whole village has been made to pay the rate or cess to the superior proprietor.

Held, (1) that a superior proprietor cannot recover, by suit under section 108, clause (2), Act XXII of 1886, read with section 16, Act IX of 1889, the patwari-rate assessed under section 13, Act IX of 1889, on a village separately assessed to revenue, from the under-proprietor with whom a sub-settlement of the whole village has been made; and (2) that a superior proprietor cannot recover patwari-cess from such an under-proprietor under section 15, clause (a), Act IX of 1889, by a suit under section 108, clause (2), Act XXII of 1886.

Per Howell, J. C.—Rent Act Ruling No. 22 of 1874 is practically superseded by the ruling of *Burkitt, J. C.*, in Rent Appeal No. 3 of 1892 and the latter ruling must be followed in respect of claims for patwari-rate or patwari-cess.

1893
23rd October.

Howell, J. C.—The plaintiff Amjad Ali Khan is the superior proprietor of a manor called Purania Kanungo in the Gonda district, and the defendant Abdul Rahman Khan, is the inferior proprietor of the same manor. The amount of revenue payable to Government on this manor was assessed at the regular settlement at Rs. 610. The amount of rent payable by the inferior proprietor to the superior for the manor was fixed at the same settlement in an appellate decree passed by the Commissioner on the 27th February 1871, at a sum equal to "the Government demand *plus* 50%," the decree adding that the superior proprietor should be "responsible for Chaukidari and Patwari." Thus the rent came to Rs. 915. Subsequently, as appears from the plaint, this sum was, in some manner unexplained, augmented by Rs. 42-12-0 on account of "Government dues;" so that it stands at Rs. 957-12-0, by common consent.

Now on the 22nd July 1891, the plaintiff sued the defendant under clause 2, section 108, Act XXII of 1886, to recover Rs. 35-6-0 arrears of rent for 1297-98 Fasli, giving the following particulars of account:—

	Rs.	A.	P.		Rs.	A.	P.
1297—To Revenue ...	610	0	0	By instalments paid ...	957	12	0
„ Government dues ...	42	12	0				
„ Malikana ...	305	0	0	„ balance ...	18	5	0
Total ...	957	12	0	Total ...	976	1	0
To Patwari-rate ...	18	5	0				
Total ...	976	1	0				
1298—To items as above ...	976	1	0	By instalments paid ...	959	0	0
„ arrears of 1297 ...	18	5	0	„ balance ...	35	6	0
Total ...	994	6	0	Total ...	994	6	0

The defendant pleaded *inter alia* (1) that he was not liable for patwari-rate; and (2) that, if he were, the rate was only $\frac{3}{4}$ per cent., and not $1\frac{1}{2}$ per cent., as the plaintiff had calculated it, on the “annual value” of the manor, *i. e.*, Rs. 1,220. And on these two pleas issue was joined. On the 1st issue the Court found as follows:—“The Commissioner held that patwari-rate “would be payable by the plaintiff, and the plaintiff was allowed “50 per cent. *malikana*. Under these circumstances the plaintiff “cannot sue defendant for the patwari-rate.” And on this finding the plaintiff’s suit was dismissed with costs. The plaintiff appealed to the District Court, which dismissed his appeal with costs, holding that the Court of first instance was right. Hence the present appeal to this Court.

In a former second appeal decided on the 2nd March 1892, (Rent Appeal No. 3 of 1892) where also the question was whether patwari-rate could be recovered as an arrear of rent by a superior, from an inferior proprietor, my learned predecessor, Mr. Burkitt, laid down the law in these words:—“Whatever “may have been the arrangement between the parties at the “time when the settlement-decree, giving respondents a per- “petual lease, was passed, I hold that, that agreement has now “been overridden and set aside by the provisions of sections “13 and 15 of Act IX of 1889, which entitle appellant to “the rent.” My learned predecessor then proceeded as follows:—“That amount on Rs. 381 would be about Rs. 2-15-8.

No. 73
1893.

"I allow this appeal, and reversing the decree of the Lower Appellate Court, I give plaintiff a decree for the full sum "claimed." The plaintiff in that suit had claimed Re. 1-8-0 for part of 1296 Fasli (1888-89 A. D.), the Patwari Act having come into force on the 1st April 1889; and Rs. 3 for 1297; as patwari-rate: but how he calculated these sums there is nothing to show. My learned predecessor seems to have awarded these sums to him on the ground that they were not in excess of what he might have claimed as patwari-cess. There is nothing on that record, however, to show whether the respondents held a sub-settlement of the estate or not.

Adopting, and following, the principle laid down by my learned predecessor that the operation of the Patwari Act, IX of 1889, cannot be excluded or affected by any previous arrangement made between the parties or their predecessors in title by decree in a settlement suit, I proceed to enquire whether under the terms of the Act, the defendant is liable to pay patwari-rate to the plaintiff; and, if so, whether such patwari-rate, when unpaid, is recoverable as an arrear of rent by suit under clause 2, section 108, Act XXII of 1886. It is admitted by the learned gentlemen who appear for the parties in this appeal that the defendant is "an under-proprietor with whom "a sub-settlement has been made of the whole village;" and upon this admission, the plaintiff's learned vakil argues that the defendant is a "landholder," as defined in section 9, clause 3, and not a "tenant," as defined in section 9, clause 4, of the Act. If this argument be correct, the defendant is liable indeed to pay patwari-rate; but under section 13, clause 3 (a), read with Rule 1 prescribed by Notification No. ^{969R.} _{614B-1,} dated 4th April 1889, it is to be collected by the Deputy Commissioner (Circulars of the Board of Revenue, Oudh, Part I, p. 3—VII), not by the plaintiff, and under section 13, clause 2, "any "sum due on account of patwari-rate shall be recoverable as if it "were an arrear of land-revenue due in respect of the estate." Thus the levy of the patwari-rate from the plaintiff is a matter between the defendant and the Deputy Commissioner, with which the plaintiff has no concern. This view of the case,

however, lands us in a difficulty, because arrears of land-revenue due in respect of the estate are recoverable from the plaintiff, not the defendant, who pays rent to the plaintiff, not revenue to the Government (section 40, Act XVII of 1876, and section 3, clause 8, Act XXII of 1886). In a note by a learned author on section 15, it is suggested, on the authority of a letter from a Secretary to Government, that "the under-proprietor pays the rate with the Government revenue to the superior proprietor, and the latter pays both to Government. The under-proprietor, as landholder of the sub-settled village, recovers the cess from the tenant" (Currie's Commentaries on the Land Revenue Act, edition of 1891, p. 100). But this theory appears to be based on a radical misconception, *viz.*, that what the under-proprietor pays to the superior proprietor is revenue, whereas nothing is clearer, on the Statutes cited and on principle, than that such payments are rent, though the amount of the revenue may be the measure of their amounts, as in the present case, where the defendant's rent is $1\frac{1}{2}$ times the amount of the Government revenue. It is true that, if the defendant be not a tenant, what is payable by him to the plaintiff is not rent, as defined in section 9, clause 6, of the Patwari Act; but it does not thereby become land-revenue, which is the assessment which the plaintiff, or his predecessor in title, became liable to pay to the Government by virtue of his agreement with the Settlement Officer (section 30, Act XVII of 1876). This difficulty does not arise under the Oudh Local Rates Act, IV of 1878, where an inferior proprietor is not a landholder, since he is not "responsible for the payment of the land-revenue" (section 3), and there is an express provision enabling the superior proprietor, as landholder, to realize a share of the rate charged on him from the under-proprietor (section 7). It may perhaps be argued that the plaintiff, who receives rent from the defendant, is a landholder under section 9, clause 3, Act IX of 1889, on the ground that the clause "and includes an under-proprietor with whom a sub-settlement has been made of the whole village" operates to enlarge the definition contained in the previous clause "Landholder means the person in receipt of the rent of any land" by including in it an

No. 73

1893.

under-proprietor holding a sub-settlement of the whole village; not to exclude the superior proprietor of a village, the whole of which has been sub-settled with an inferior proprietor (Stroud's Judicial Dictionary, p. 267). If that be so, the plaintiff also is liable to pay patwari-rate, which as a matter of fact, is collected from him by the Deputy Commissioner under section 13, clause 3, *a*, and the Notification before mentioned. But, according to the argument of his own learned vakil, he cannot come upon the defendant for patwari-cess under section 15, because the defendant is not a tenant. If, however, it be held that the defendant, as a "person holding directly from the landholder" is a tenant, not being excluded by the subsequent clause "and includes an under-proprietor of land, not being an under-proprietor with whom a sub-settlement of the whole village has been made," so that the definition virtually runs "'Tenant' means the person holding directly from the landholder, even if such person be an under-proprietor with whom a sub-settlement of the whole village has been made, and includes an under-proprietor with whom a sub-settlement of the whole village has not been made," then the plaintiff can recover patwari-cess from the defendant at 1½ pies per rupee on the rent, Rs. 915, payable by the defendant, *i. e.*, Rs. 7-2-4; while the defendant can recover patwari-cess from his tenants at the same rate on their rent; because he is "the landholder of.....land in respect of which the patwari-rate is for the time being payable" (section 15).

There is a provision in the Act (section 16), "suits for the recovery of any sum on account of the patwari-rate.....and appeals and other proceedings arising out of such suits shall be cognizable as if such suits had been included among the suits mentioned in section 108, clause 2, of the Oudh Rent Act, 1886," which suggests that the Legislature contemplated that the superior proprietor should pay the patwari-rate, and recover it, as patwari-rate, not recover a patwari-cess, from the inferior proprietor, just as the plaintiff here is attempting to do. And, if the Local Government had, by Notification issued under section 13, clause 3, *a*, prescribed that patwari-rate should

be collected by a superior from an inferior proprietor holding a sub-settlement of the whole village, the present suit might be maintainable. But, in the absence of such a Notification, I do not see how the plaintiff can get benefit of this provision.

The policy of the Act is evidently to distribute the burden of the patwari-rate equally between the landlord and his tenantry. The theory is that the land-revenue is half the rental. The "annual value" therefore being "double the amount of the land-revenue" (section 3, clause 5 (1)), equals the rental. Let us, for the sake of simplicity, take a manor owned by a single landlord, who has let out all the lands to non-proprietary tenants. Under section 13 he pays Government $1\frac{1}{2}$ per cent. on the annual value, *i. e.*, on the rental; and under section 15 he recovers from his tenantry $1\frac{1}{2}$ pies per rupee, *i. e.*, as nearly as possible $\frac{3}{4}$ per cent., on the rental. Thus he pays half the rate, and his tenantry pay the other half. Now on the construction which makes the defendant a tenant in relation to the plaintiff, and a landlord, by virtue of his sub-settlement, in relation to all the other tenants on the manor, this distribution of the rate is disturbed. For, the annual value, *i. e.*, the rental, being Rs. 1,220, the plaintiff pays $1\frac{1}{2}$ per cent. on that sum, *i. e.*, Rs. 18-5-0, to Government; and recovers $1\frac{1}{2}$ pies per rupee on the rent Rs. 915 payable to him by the defendant, *i. e.*, Rs. 7-2-4; while the defendant recovers $1\frac{1}{2}$ pies per rupee on the rental Rs. 1,220, *i. e.*, Rs. 9-8-6. Thus the non-proprietary tenants pay about half the rate, *i. e.*, Rs. 9-8-6, the rate being Rs. 18-5-0; but the plaintiff, instead of paying the remainder Rs. 8-12-6, pays Rs. 18-5-0 less Rs. 7-2-4, *i. e.*, Rs. 11-2-8, or Rs. 2-6-2 too much; while the defendant, who receives Rs. 9-8-6, and pays only Rs. 7-2-4, makes a profit of Rs. 2-6-2 at the expense of the plaintiff. I do not think that such a result was contemplated; and therefore my conclusion is that the plaintiff's learned vakil is right in his construction, which makes the defendant a "landlord"—in fact the only "landlord" within the meaning of the Act—and not a "tenant." It is true that, on this construction, the superior proprietor pays nothing, or ought to pay nothing; but this is probably because he is regarded

No. 73
1893.

as a mere channel for the payment of the revenue and rates due to Government on the manor. And, on this construction, as above shown, the defendant is liable to pay patwari-rate, but not to the plaintiff, for want of a Notification by the Local Government prescribing that the rate should be collected from the defendant by the plaintiff.

The rate, it will be observed, is "payable by the land-holder independently of.....any land-revenue assessed on "the estate" (section 13, clause 2); and therefore it does not form part of "the Government demand," which is the measure of the rent payable by the defendant to the plaintiff. If it did, the defendant would have to pay not only the rate, but half as much again, to the plaintiff, as part of his rent.

My conclusion is that the defendant is not liable to pay patwari-rate to the plaintiff; and therefore I need not determine how the rate would be recoverable by the plaintiff from him if he were liable to pay it. If I were to act on this conclusion, I should confirm the decree of the Lower Appellate Court, though on a ground different from the one taken by the two Lower Courts; and should dismiss this appeal with costs. But since writing this judgment, I have ascertained that the very questions for decision in this appeal have been referred by my learned colleague to the Bench for decision in Rent Appeal No. 29 of 1892; and therefore I think that this appeal also should be heard by the two Judges of the Court, and I certify accordingly.

Howell, J. C.—The main questions for decision in this appeal may be stated in the terms of the reference to the Full Court made by my learned colleague, the Additional Judicial Commissioner, in Rent Appeal No. 29 of 1892, namely, (1) whether a superior proprietor can recover the patwari-rate assessed under section 13, Act IX of 1889, on a village separately assessed to revenue, from the under-proprietor with whom a sub-settlement of the whole village has been made, by a suit under clause 2, section 108, Act XXII of 1886, read with section 16, Act IX of 1889; and, if so, whether such rate

is to be levied from the under-proprietor under section 13, Act IX of 1889, at the rate of $1\frac{1}{2}$ per cent. on the annual value, as defined in clause 5, section 9, Act IX of 1889, of the village : or (2) whether a superior proprietor can recover patwari-cess from such an under-proprietor under section 15, clause (a), Act IX of 1889, at the rate of $1\frac{1}{2}$ pies for every rupee of his rent, by a suit under clause 2, section 108, Act XXII of 1886.

In strictness the 2nd question does not arise in this appeal, No. 86 of 1892, because what the plaintiff claims in this case is patwari-rate at $1\frac{1}{2}$ per cent. on the annual value of the estate, not patwari-cess at $1\frac{1}{2}$ pies on every rupee of the rent payable by the defendant to the plaintiff. But, if the first question were answered in the negative, and the second in the affirmative, we might be disposed to follow the precedent set in Rent Appeal No. 3 of 1892, where, as shown in my referring order, sums claimed as patwari-rate were awarded by my learned predecessor as patwari-cess.

In that order I set out, at length, my reasons for concluding that, in the case stated, the under-proprietor, and not the superior proprietor, is the "landholder," and is not a "tenant," within the meaning of the Act. I am fortified in this conclusion by two considerations. The first is that, in the Act, the word "landholder" is used in Part II, which applies to Oudh, to describe the person liable to pay the patwari-rate, and entitled to recover the patwari-cess, instead of "landlord," as in Part I, which applies to the North-Western Provinces. There are, in the case stated, two persons having proprietary interests in the estate, the superior proprietor, or landlord, as defined in section 3, clause 11, Act XXII of 1886, *i. e.*, the lord of the manor, who is seised of the land in service; and the inferior proprietor, or landholder, as defined in section 9, clause 3, Act IX of 1889, *i. e.*, the terre-tenant, who is seised of the land in his demesne as of fee. And the use of the word "landholder" in sections 13 and 15 shows that the rate is payable, and the cess recoverable, by the inferior not the superior, proprietor. The second consideration is that the Hon'ble Mr. Quinton, on the 27th March 1889, in moving the Legislative Council of the Governor-

No. 73

1893.

General to take the Report of the Select Committee on the Bill into consideration, made the following declaration :—" In "sections 9, 13, and 15 we have adopted a recommendation of "the Local Government, and declared under-proprietors of "entire villages in Oudh liable to the whole rate, and entitled "to collect the cess from the tenants. This is in accordance "with the practice which prevailed almost universally in the "province before the Act of 1882. Under-proprietors of plots "of land, not being whole villages, will be treated as tenants, "and pay the cess only." I make this reference to the Proceedings of the Legislative Council on the authority of Select Case No. 222, at p. 29. The Bill, as amended by the Select Committee, was passed into law two days later. The construction to be placed upon the words "landholder" and "tenant," in the case stated, is thus authoritatively declared; and it is identical with that contained in the following passage from Colonel Currie's Note on section 15, part of which Note was cited in my referring order:—"The rate is paid by the landholder "(section 13); and the landholder in a sub-settled village is not the "superior proprietor; but the under-proprietor (section 9)..... "The under-proprietor, as landholder of the sub-settled village, "recovers the cess from the tenants." The amendments of the Select Committee, the Hon'ble Mr. Quinton states, were made on the recommendation of the Local Government; and Colonel Currie's Note is professedly derived from an exposition by a "Secretary to Government." Naturally therefore Colonel Currie's Note lays down the construction intended by the Select Committee. And on this construction, in the case stated, the patwari-rate is payable by the under-proprietor, as "the landholder" (section 13, sub-section 2). But I can find no provision in the Statute to make the patwari-rate payable to the superior proprietor. The sub-section last quoted enacts that "Such rate, hereinafter referred to as the patwari-rate, "shall be payable by the landholder independently of, and in "addition to, any land-revenue assessed on the estate, and any "rate or cess leviable under, or recognized by the Oudh Local "Rates Act, 1878, and any sum due on account of the patwari- "rate shall be recoverable as if it were an arrear of land-revenue

"due in respect of the estate." Substituting, for the purposes of the case stated, the word "under-proprietor" for "landholder" in this passage, I am unable to discover in it any direction that the rate shall be payable to the superior proprietor. The "Secretary to Government," whose exposition, probably in a letter, is quoted by Colonel Currie as authority for his Note on section 15, apparently deduces such a direction from the words "in addition to any land-revenue assessed on the estate;" for he says "The under-proprietor pays the rate with the Government revenue to the superior proprietor, and the latter pays both to Government." The under-proprietor, however, does not pay the Government revenue to the superior proprietor; he pays to the superior proprietor a rent (sections 40 and 158, Act XVII of 1876, and section 3, clause 8, Act XXII of 1866); and the superior proprietor pays the revenue to the Government. It is true that, if the superior proprietor be not a "landholder," nor the under-proprietor a "tenant," then what the latter pays to the former on account of the use or occupation of, or on account of his right in, the land is not "rent" as defined in section 9, clause 6, Act IX of 1889; but it does not therefore become revenue. "Revenue" is defined in section 3 (4), Act XXII of 1886, as "money payable to the Government on account of land;" and nothing is payable by the under-proprietor to the Government. The under-proprietor holds the Mahal of the superior proprietor on a rent, just as a terre-tenant (landholder) may hold a manor of a tenant *in capite* in England; and the superior proprietor holds of the Government on a rent, just as a tenant *in capite* may hold of the Crown in England. The rent payable by the superior proprietor to the Government may properly be, and conveniently is, described as revenue, just as the rent payable by a tenant *in capite* to the Crown in England may be, and often is so described (Chitty on the Prerogative, p. 211). But, on no principle, can the rent payable by the inferior to the superior proprietor be described as revenue, even though the superior proprietor may pay his revenue out of it, and in fact be dependent upon it for his ability to pay his revenue. So long ago as the enactment of the Code of 1793, says Sir Barnes Peacock, C. J.,

No. 73
1893.

in *Mahomed Akil* versus *Asad-un-nissa Beebee* (1), "the words 'rent' and 'revenue' were used to designate two distinct and separate things;" and I see no reason to suppose that they were confounded by the framers of Act IX of 1889. I cannot therefore hold that the words "land-revenue assessed on the estate" in section 13, clause 2, Act IX of 1889, mean, or include, "the rent payable by the under-proprietor to the superior proprietor on account of the latter's right in the estate." It is true that section 108, Act XVII of 1876, enacts that "In the case of every Mahal . . . all the proprietors, jointly and severally, shall be responsible to Government for the revenue for the time being assessed on the Mahal;" and then proceeds to define "proprietors," for the purposes of Chapter VII, (sections 108-160) of the Act, as including "all persons in possession for their own benefit:" and that, in section 26, clause *b*, the word "proprietor" evidently includes an inferior proprietor. But in section 3, clause 6, Act XXII of 1886, "proprietor" is expressly said not to include an under-proprietor; and in sections 40, 132, proviso *a*, and 157, Act XVII of 1876, a distinction is made between "proprietor" and "under-proprietor;" while in section 158, which refers to section 40, "proprietor" is evidently distinct from "under-proprietor." And a comparison of the marginal *placitum* to section 131 with the body of the section shows that "proprietor" is used in the former as equivalent to "the person entitled to be settled with under section 26" in the latter. Moreover, section 158 provides an alternative method of enforcing the inferior proprietor's responsibility to the superior for "rent." And it is inconceivable that the inferior proprietor, in addition to being responsible for payment of the rent, out of which the superior proprietor is to pay the revenue to Government, should be responsible to Government for the payment of the revenue by the superior proprietor. I therefore conclude that the word "proprietors" in section 108 means "persons settled (not sub-settled) with," *i.e.*, in the case stated, the superior proprietor; and that the words "in possession" used in the definition of "proprietors" given by that section refer, in the case stated, to the superior

(1) B. L. R. Supp. Vol., 774 at page 824.

proprietor's seisin in service. The section, then, in no way affects my opinion that the words "land-revenue assessed on the estate" in section 13, clause 2, Act IX of 1889, do not mean, or include, the rent payable by the under-proprietor to the superior. Further I cannot allow that the words "in addition to" mean "with," the gloss apparently put upon them by Colonel Currie's Note, such an interpretation being obviously inconsistent with the previous words "independently of." In my opinion, whatever meaning may be given, in accordance with the nature of the tenure of the estate, to the word "landholder" in section 13, clause 2, the next words "independently of, and in addition to, any land-revenue assessed on the estate, and any rate or cess leviable under, or recognized by, the Oudh Local Rates Act, 1878," must mean "independently of, and in addition to, any (sums payable by the person settled with as) land-revenue assessed on the estate, and any rate," &c. The remaining words of the sub-section "and any sum due on account of the patwari-rate shall be recoverable as if it were an arrear of land-revenue due in respect of the estate" are not free from difficulty, because patwari-rate is due by, and recoverable from, the landholder, *i. e.*, in the case stated, the inferior proprietor; while land-revenue is due by, and recoverable from, the person settled (not sub-settled) with, *i. e.*, the superior. But their intention is probably to authorize the employment of processess for the recovery of arrears of patwari-rate from the inferior proprietor, in the case stated, similar to those authorized by section 158, Act XVII of 1876, for the recovery of arrears of rent from him. This, then, is the construction which I put upon the sub-section in order to give effect to the intention of the Legislature as expressly declared by the Honorable Mover of the Bill. At the same time, observing that this sub-section is, word for word, the same as sub-section 2, section 5, with the substitution of "landholder" for "landlord," and "Oudh" for "North-Western Provinces," I cannot help thinking that this sub-section was originally so drawn as to place the liability for the rate, in the case stated, on the superior proprietor, in which draft the whole sub-section would be consistent and easily intelligible; and that it was afterwards so amended

No. 73
1893.

by substituting "landholder" for "landlord," and altering the definition of "landholder" in section 9, clause 3, as to transfer the liability, in the case stated, to the inferior proprietors; but that the rest of the sub-section was inadvertently left as it originally stood; so that in the case stated, the sub-section is apparently inconsistent and hardly intelligible. However this may be, I find nothing in the sub-section, as it now stands, to make the rate payable to, or recoverable by, the superior proprietor.

The next sub-section, 3 (a), enacts that "the Local Government may, by Notification in the official Gazette—(a) prescribe by what instalments, and at what times and places, the patwari-rate is to be paid, and by whom it is to be assessed and collected." Colonel Currie, the learned Commentator on the Oudh Revenue Act, who has inserted Part II, Act IX of 1889, in Chapter XII of his work, has unfortunately omitted to set out the Notification issued under this provision of the law. So far as I have been able to discover, it is Notification No. $\frac{969 \text{ R}}{614 \text{ B}-1}$, dated the 4th April 1889, prescribing that "The patwari-rate will be assessed and collected by the Deputy Commissioner of the district in which the estate is situated, and shall be paid at the same time and places as the land-revenue payable in respect of such estate;" and giving further directions as to the instalments, which need not be set out here (Board's Circulars, Oudh, Part I, 3—VII). Reading this Notification with sub-section 2, as above construed, I arrive at the conclusion that, in the case stated, the patwari-rate is payable by the inferior proprietor, to the Deputy Commissioner at the same time and places as the land revenue payable by the superior proprietor, *i. e.* that the inferior proprietor is bound to pay his patwari-rate to the Deputy Commissioner at the same time and place as the superior proprietor is bound to pay his land-revenue to that Officer. There is not a word in the Notification to authorize the superior proprietor to collect the rate from the inferior. Nor is there a word in the Act to empower the Deputy Commissioner to collect the rate from the superior. As a matter of practice, however, the Deputy

Commissioner, in apparant forgetfulness of the construction authoritatively declared by the Honorable Mover of the Bill, has all along been collecting the rate from the superior proprietor, who is naturally anxious to recover it from the inferior. Unfortunately there is no provision of the law enabling him to do this in the present suit. The Act, section 16, no doubt enacts that "Suits for the recovery of any sum on account of the patwari-rate . . . shall be cognizable as if such suits had been included among the suits mentioned in section 108, clause 2, of the Oudh Rent Act, 1886." But this provision merely vests in Courts of Revenue exclusive jurisdiction to try such suits, when maintainable: it does not make such suits maintainable. A suit by the superior proprietor, in the case stated, to recover sums paid by him to the Deputy Commissioner on account of patwari-rate payable by the inferior would apparently not be maintainable under section 69, Act IX of 1872, because the superior proprietor was not interested in the payment of the rate by the inferior, upon whom alone the whole liability rested, and was enforceable by the Deputy Commissioner. Such a suit might perhaps be maintained under section 70, Act IX of 1872, on the ground that the payment was lawfully made for the inferior proprietor (Cunningham and Shephard's Notes on the Indian Contract Act, 6th edition, pages 204-205). But, if so, it would be a suit for the recovery of compensation under section 73, Act IX of 1872, for breach of the obligation created by section 70, not a suit for the recovery of any sum on account of the patwari-rate; and would therefore be cognizable by the Civil Court, like other suits under section 73, Act IX of 1872, not by the Revenue Court under section 16, Act IX of 1889, read with section 108, clause 2, Act XXII of 1886. It is true that this suit, having been instituted on the 22nd July 1891, is governed by sections 124 B-D, Act XXII of 1886; and that the corresponding sections of the North-Western Provinces Rent Act, 1881, have been held to apply when the objection to jurisdiction relates, as here, to only part of the claim (*Lachhmi Narain versus Bhawani Din* (1); and *Badri Nath versus Bhajan Lal*) (2).

(1) I. L. R. 4 All 379.

(2) I. L. R. 5 All 191.

No. 73
1893.

But to turn a suit brought for the recovery of money as rent, or patwari-rate, payable by an inferior to a superior proprietor, into a suit for the recovery of damages for breach of an obligation created by section 70, Act IX of 1872, is entirely to alter "the character of the suit, and the *status* of the plaintiff to sue;" and it has been held that, in such a case, the corresponding sections of the Act of 1881 do not empower the Lower Appellate Court or the High Court to deal with the suit (*Rai Kishen versus Harsarup*) (1). Similarly it was held that a claim for damages assessed upon the value of the produce of land, on account of use and occupation, could not be converted by the aid of the sections into one for rent assessed in the mode provided by section 7 of the Rent Act (*Dhyan Rai versus Thakur Rai*) (2).

I would return the following answers to the questions formulated by my learned colleague, the Additional Judicial Commissioner:—(1) a superior proprietor cannot recover, by suit under section 108, clause 2, Act XXII of 1886, read with section 16, Act IX of 1889, the patwari-rate assessed under section 13, Act IX of 1889, on a village separately assessed to revenue, from the under-proprietor with whom a sub-settlement of the whole village has been made: and (2) a superior proprietor cannot recover patwari-cess from such an under-proprietor under section 15, clause *a*, Act IX of 1889, by a suit under section 108, clause 2, Act XXII of 1886.

The whole appeal, in the present case, having been referred to the Full Court, I may add that, in my opinion, Rent Act Ruling No. 22 of 1874, cited by Colonel Currie in his Commentaries on the Oudh Rent Act, XXII of 1886, 4th edition, page 75, is, in the case of patwari-rate or patwari-cess claimed under Act IX of 1889, practically superseded by the ruling of my learned predecessor in Rent Appeal No. 3 of 1892, set out in my referring order; and that the latter ruling must be followed in respect of such claims. But, since, as above shown, the claim of the present plaintiff to recover patwari-rate from the defendant is not maintainable under section 108, clause 2,

(1) 3 Weekly Notes 20. (2) 2 Weekly Notes 138.

Act XXII of 1886, read with section 16, Act IX of 1889, I would confirm the decree of the Lower Appellate Court, and dismiss this appeal with costs.

Nos. 73 & 74
1893.

Spankie, A. J. C.—I would return the same answers to the questions referred to us as the learned Judicial Commissioner. Looking at the definitions of "landholder" and "tenant" in Part II of Act IX of 1889, it appears that the framers of the Act intended that, in the case of a village which had been sub-settled, the under-proprietor should be regarded as the "landholder" for the purposes of the Act, and should pay the patwari-rate, recovering a cess from his tenants. They also apparently contemplated that, in such a case, the under-proprietor should pay the rate together with his rent to the superior proprietor, and that if he failed to pay the rate he might be sued by the superior proprietor in the Revenue Court for the rate just as he might be sued by the superior proprietor in that Court for rent. But it is impossible to hold, on a proper construction of sub-section (2) of section 13 of the Act, as the learned Judicial Commissioner has clearly demonstrated, that under that sub-section the rate is payable by the under-proprietor to the superior proprietor together with the former's rent. There is therefore nothing in the Act which gives the superior proprietor the right to sue the under-proprietor for the rate. As the under-proprietor is not a "tenant," within the meaning of Part II of the Act, the superior proprietor cannot recover from him the cess mentioned in section 15 of the Act. As regards the rest of the case, I would dismiss the appeal, for the reasons given by the learned Judicial Commissioner.

No. 74.

Before M. S. Howell, Esq., LL. D., C. I. E., C. S., Judicial Commissioner.

RAM SAHAI (DEFENDANT), APPELLANT *v.* CHANDI (PLAINTIFF),
RESPONDENT.

Jurisdiction.—*Civil and Revenue Courts*—*Suit by tenant against sub-tenant for recovery of his land*—Act XXII of 1886, s. 108, clause (4)—Act XIV of 1882 (*Civil Procedure Code*), ss. 57 (a), 562, 588 (6) and (28)—

No. 74

1893.

Return of plaint for presentation to proper Court—Appeal—Remand of case by Appellate Court for disposal—Appeal to High Court—Act VII of 1870 (Court-fees Act), s. 13—Refund of fee on memorandum of appeal.

A suit by a tenant against a sub-tenant at will for recovery of his land on the ground that he had determined the will, when he required the defendant to vacate his land, but that the defendant held over, is a suit by a landlord, as defined in Act XXII of 1886, for ejectment of a tenant, as defined in the same Act, and therefore is exclusively cognizable by the Revenue Court under s. 108, clause (4) of that Act.

Jey Singh v. Moorlee (1), *Rent Act Ruling No. 46*, and *Chiddu v. Narpāt* (2) referred to.

A Munsif, under s. 57 (a), Code of Civil Procedure, returned a plaint for presentation to the proper Court. The plaintiff appealed to the District Court, which reversed the Munsif's order, and remanded the case to him for disposal on the merits. The District Court also made an order under s. 13, Act VII of 1870, for refund of the stamp paid on the memorandum of appeal. The defendant appealed to the Judicial Commissioner.

Held, that the District Court's order was not one under s. 562, Code of Civil Procedure, but one directing the Munsif to proceed with the trial of the suit, and was not appealable.

Held, also, that the District Court's order for refund of the stamp was *ultra vires* and erroneous.

1893
24th Nov.

The plaintiff's case was that he held, as a tenant, certain lands, the area of which was 11 standard bighas, from the landlord of the village, in which the lands were situate; that the defendant held 4 bighas, 11 biswas, parcel of the said 11 bighas, as his sub-tenant, from him, at an annual rent of Rs. 12; that this sub-tenancy was, by the terms of the contract between the parties to it, a tenancy at will; and that he, the plaintiff, had determined the will on the 19th April 1890, when he required the defendant to vacate the said $4\frac{11}{20}$ bighas; but that the defendant held over. Accordingly the plaintiff prayed judgment for possession of the land and costs. On the case cited by the Munsif, in whose Court the plaint was presented, *i. e.*, *Jey Singh versus Moorlee*, (1) to which may be added *Rent Act Ruling No. 46* and *Chiddu versus Narpāt* (2), it is clear that this was a suit by a landlord, as defined in Act XXII of 1886, for ejectment of a tenant, as defined in the same Act; and therefore was exclusively cognizable by the Revenue Court under section 108, clause (4) of that Act.

The Munsif, rightly holding this to be so, returned the plaint for presentation to the proper Court. This order, though no section of the Code is quoted in it, must have been made under section 57, clause *a*; and was therefore appealable under section 588, clause 6.

The plaintiff appealed to the District Court, which, after remarking that the suit was "one purely for the Civil Courts to try," and that "the plaint should never have been rejected in the first instance," reversed the Munsif's order, and remanded the case to him for disposal of the suit on the merits. The District Court also made an order, presumably under section 13, Act VII of 1870, for refund of the stamp paid on the memorandum of appeal.

From this order the present appeal is preferred by the defendant.

The order is plainly wrong. The suit, on the authorities above quoted, was not cognizable by the Munsif, who rightly returned the plaint. The Munsif did not reject it, as erroneously stated by the District Court.

But there is no appeal from the District Judge's order, passed on an appeal under section 588, clause (6). Mr. Manuel, for the defendant, refers to section 588, clause (28). But the District Court's order of remand was not an order under section 562, nor is it expressed to be such an order. Section 562 applies, when a suit has been disposed of upon a preliminary point. Here the Munsif did not dispose of the suit upon any point, preliminary or otherwise. He declined to retain the plaint on his register, and to try the suit. The appellant has probably been misled by the use of the words "remand the case to the Lower Court to dispose of the suit on the merits," and by the order for refund of the stamp paid on the memorandum of appeal. The District Court, having reversed the order for return of the plaint, was bound to add a direction to the Munsif to proceed with the trial of the suit, and this must be taken to be the meaning of the words just quoted from the District Judge's order. His order for refund of the stamp seems

Nos. 74 & 75
1893-95.

to have been *ultra vires* and erroneous, there being no power under section 13, Act VII of 1870, to make a refund in a case where a plaint has been returned, not rejected.

This appeal must be dismissed with costs, since no appeal is allowed by law from the order of the Lower Appellate Court.

No. 75.

Before M. S. Howell, Esq., LL. D., C. I. E., I. C. S., J. C.

NIAMAT KHAN AND OTHERS (PLAINTIFFS) v. MAHOMED HUSAIN KHAN (DEFENDANT).

Act XXII of 1886, s. 108, clause 15, and s. 135—Suit by co-sharer against lambardar—Death of defendant pendente lite—Jurisdiction of Revenue Court—Act XIV of 1882 (Civil Procedure Code), s. 368.

The jurisdiction of the Revenue Court is not ousted by the death *pendente lite* of the defendant in a suit by a co-sharer against a lambardar under s. 108, clause 15, Act XXII of 1886. On the defendant's death his legal representatives should be brought on the record under s. 368, Civil Procedure Code, read with s. 135, Act XXII of 1886, and the case should proceed as if such representatives had originally been lambardars, and been sued as such.

Ram Charan v. Bhola (1) referred to.

1895
 8th Nov.

HOWELL, J. C.—I think that a suit under clause 15, section 108, Act XXII of 1886, by a co-sharer against a lambardar for a share of the profits of an estate, or any part thereof, is in substance a suit for money due to the plaintiff for money had and received by the defendant to the plaintiff's use, and therefore survives against the legal representatives of the deceased defendant.

On the defendant's death, his legal representatives should be brought on the record under section 368, Civil Procedure Code, read with section 135, Act XXII of 1886, "and the case shall thereupon proceed in the same manner as if such representatives had originally been made defendants" (section 368), meaning, as if such representatives had originally been lambardars, and been sued as such.

I do not think that the jurisdiction of the Revenue Court is ousted by the death of the defendant-lambardar *pendente lite*.

No. 75
1895.

In these conclusions I am fortified by the decision of the North-Western Provinces High Court in *Ram Charan* versus *Bhola* (1). "

I therefore direct the Deputy Commissioner to proceed with the case.

(1) 8 Weekly Notes, 63.

E. J. E. H. R.
7/17/06

